

1 A. Yes, I did.

2 Q. What parts of this did you complete?

3 A. The bottom part, my signature.

4 Q. Did you send this to AMS?

5 A. No, I did not.

6 MS. WALKER: I think it lacks foundation as to how this
7 document came to be.

8 JUDGE ROSAS: Any additional voir dire? Counsel?

9 MR. HEARING: Oh, from me?

10 JUDGE ROSAS: She's indicating lack of foundation.

11 Q. BY MR. HEARING: Sir, this was presented to you by
12 Mr. Peterson for your signature; is that correct?

13 A. That is correct.

14 Q. And you executed the signature on 5/29/12, correct?

15 A. That is correct, but I was currently working at the
16 time, prior to this.

17 MR. HEARING: Move the introduction of Respondent's 39.

18 JUDGE ROSAS: And you argue that there's insufficient
19 foundation because?

20 MS. WALKER: Because the person who generated it and
21 sent it to AMS is not here to testify.

22 JUDGE ROSAS: Well, the witness has acknowledged his
23 signature. Again, based on the standard of whether the proof
24 adduced tend to indicate that the document is more likely
25 than not to be what it purports to be has been met. So I'm

1 going to receive Respondent's 39 in evidence over objection.

2 **(Respondent's Exhibit 39 received in evidence.)**

3 MS. LEONARD: For the record, there is no objection from
4 the General Counsel.

5 **CROSS-EXAMINATION (cont.)**

6 Q. BY MR. HEARING: And Mr. Bontempo, back in 2000, when
7 you were at AMS, by your earlier testimony, you were a member
8 of the Union then, correct?

9 A. That is correct.

10 Q. And you made known to people that you were a member of
11 the Union then, correct?

12 A. That's correct.

13 Q. Okay. And so people at AMS knew that you were a member
14 of the Union at the time, at or around the time you came back
15 for that trial period, and then were put in as a
16 superintendent, correct?

17 A. I can't refer if the same personnel in 2000 was there at
18 2012. There's a 12-year difference between. I'm not sure
19 we're following the line of questioning exactly, but --

20 Q. Sure. Do you question, though, that when you were hired
21 in 2012 and placed as a superintendent in 2012 by AMS, that
22 AMS didn't know you were a member of the Union?

23 A. I'm not sure what they knew. It was a discussion
24 between me and Marc Carney, because my first several weeks
25 paychecks, there were no union deductions taken out of it.

1 And I kept questioning why. And that's when he said, oh,
2 you're a union member? And I said yes.

3 Q. Okay. So --

4 A. So --

5 Q. All right. So -- but once you were there, at some
6 point, then, we can all agree that AMS learned that you're a
7 member of the Union, correct?

8 A. That is correct.

9 Q. And you testified earlier, yesterday, I believe, you
10 left AMS voluntarily to take a position with the Union,
11 correct?

12 A. Yes, sir.

13 Q. All right. So, and AMS, while you were employed with
14 them, I presume, did not discipline or discharge you because
15 of any affiliation you had with the Union, correct?

16 A. That is correct.

17 Q. All right. Now, with regard to your dues --

18 MR. HEARING: May I approach, Your Honor? May I
19 approach the witness?

20 JUDGE ROSAS: Sure.

21 MR. HEARING: All right. Showing counsel, I'm providing
22 copies of what's marked for identification purposes as R-57.

23 **(Respondent's Exhibit 57 marked for identification.)**

24 JUDGE ROSAS: Thank you.

25 Q. BY MR. HEARING: Can you take a moment to identify that,

1 sir? Have you had a chance to look at these two documents?

2 A. Yes, I have.

3 Q. All right. And along the lines of your request to have
4 union dues deducted from your paycheck at AMS, do these
5 documents comport with your recollection of the time period
6 when you asked for same?

7 A. To the best of my knowledge, yes.

8 Q. All right. And after the date of May 30th, 2012, was
9 3 percent of your gross wages taken out for dues?

10 A. Yes, it was.

11 Q. That's your recollection?

12 A. To the best of my knowledge.

13 Q. All right. And the second page of this document
14 reflects rates of pay, one as a crew leader and then one as a
15 new rate of pay. Do those comport with your recollection of
16 what you were paid at AMS?

17 A. Yes, sir. It does.

18 MR. HEARING: All right. Move the introduction of
19 Respondent's 57.

20 MS. WALKER: Objection, Your Honor. I don't think
21 Mr. Bontempo's testified that he had anything to do with the
22 creation of these documents. His name is not signed on these
23 documents.

24 MS. LEONARD: I would also object as to the relevance of
25 the wage change form, page 2.

1 MR. HEARING: I can point out where I'm going with this
2 through my next questioning, but I'll go ahead and reveal it
3 now. The indication of the wage that he made, and then his
4 testimony yesterday about the materials sent out by AMS with
5 regarding -- regard to the quantification of union dues,
6 that's why it's relevant.

7 MS. LEONARD: The what?

8 MS. WALKER: I don't think that we're talking about the
9 same time period from what he talked about with union dues.
10 In relation to the Union, the campaign, the Company's
11 campaign literature?

12 MR. HEARING: Yes.

13 MS. WALKER: There's two different time periods. They
14 wouldn't -- the rates would not necessarily even be the same
15 at that time.

16 JUDGE ROSAS: Well, it's -- that would be as irrelevant
17 as testimony potentially regarding his experience as a worker
18 and as a superintendent during the period preceding this
19 controversy. So it's no less relevant, being even though it
20 is a few years remote.

21 So you've never seen this document before, sir?

22 THE WITNESS: No, I have not, Your Honor.

23 JUDGE ROSAS: Okay. And none of your handwriting's on
24 it?

25 THE WITNESS: No. No, sir.

1 JUDGE ROSAS: All right. So I'm going to sustain the
2 objection. You'll have to get it through somebody else.

3 MR. HEARING: Sure.

4 Q. BY MR. HEARING: The testimony you gave yesterday, you
5 remember, you were asked about General Counsel Exhibit,
6 General Counsel Exhibit 7. You remember being asked about
7 that yesterday? If you turn to that in the --

8 A. Seven in this book?

9 Q. It's not in your -- it's not in a book. I just put mine
10 in a book so I can find them faster. It'll be in the middle
11 one.

12 MS. WALKER: It should be on the -- it should be in on
13 the table there in front of you, in the middle stack.

14 JUDGE ROSAS: You need to put that up here. You need to
15 put that up here, so we can --

16 THE WITNESS: Yes, sir.

17 Q. BY MR. HEARING: All right. So you remember being
18 questioned about that yesterday?

19 A. Yes, sir.

20 Q. All right. Three percent deduction from your paycheck
21 in 2012 would have been hundreds of dollars in that year,
22 correct?

23 A. Yes.

24 Q. All right. And you understand -- I think you testified
25 yesterday you understand that Florida is a right to work

1 state?

2 A. Yes, I do.

3 Q. And that's a true statement, isn't it, that it's a right
4 to work state?

5 A. Yes, it is.

6 Q. In your current role as a field representative, who do
7 you currently report to?

8 A. I report to President Jay Smith.

9 Q. And he's the president, secretary, and treasurer for
10 Local 8?

11 A. That is correct.

12 Q. All right. And are you aware that on the Local 8
13 website, you're identified as someone for out-of-work or
14 relocating members to call if they want to work in Florida?

15 A. Yes, I am.

16 Q. All right. After you went to work for the Union as a
17 field representative, you personally met with Mr. Ron Karp in
18 your capacity as the field representative, right?

19 A. That is correct.

20 Q. And you came to learn Mr. Karp's e-mail address and
21 phone numbers, correct?

22 A. That's correct.

23 Q. All right. And you've, from time to time, e-mailed
24 Mr. Karp and/or called Mr. Karp, correct?

25 A. That's correct.

1 Q. And from time to time you've met with Mr. Karp in 2015
2 and 2016, correct?

3 A. That is correct.

4 JUDGE ROSAS: Oh, hold on.

5 MS. LEONARD: Your Honor --

6 JUDGE ROSAS: You have an objection?

7 MS. LEONARD: I don't have an objection. I would
8 request that since there are two Mr. Karps relevant to this
9 proceeding, that at all times we refer --

10 MR. HEARING: Good point.

11 MS. LEONARD: -- to either Richard or Ron Karp.

12 MR. HEARING: It's a good point.

13 JUDGE ROSAS: Well, he's talking about Ron Karp right
14 now.

15 MS. LEONARD: Right, but going forward.

16 MR. HEARING: Yes. I'll say Ron or Richard Karp. I
17 think that's a good point.

18 Q. BY MR. HEARING: My last series of questions, I want to
19 be clear, I was referring to Ron Karp. Were you referring to
20 Ron Karp?

21 A. Yes, I was.

22 Q. All right. And so, in 2015, 2016, you met with Mr. Ron
23 Karp in an effort to try to reach an agreement between Local
24 8 and AMS, correct?

25 A. That is correct.

1 Q. And you remember meeting with Mr. Karp for how long and
2 how often?

3 A. I think there was at least four different meetings on
4 average lasting approximately 2 hours.

5 Q. Do you recall Mr. Karp being open, Mr. Ron Karp being
6 open to the possibility of signing an agreement with Local 8,
7 if the terms were acceptable to AMS?

8 A. Yes, I do.

9 Q. All right. And I understand you've testified that you
10 believe that AMS didn't timely withdraw from the prior MOU,
11 but you -- after -- when did you learn that AMS attempted to
12 withdraw from its prior MOU?

13 A. The exact time frame, I'm not a hundred percent sure.

14 Q. It would have been in 2016?

15 A. That is correct.

16 Q. All right. And you can't testify that -- or can you
17 testify that there was an actual new agreement signed by AMS
18 and Local 8?

19 A. Repeat the question, please.

20 Q. Sure. My question is did a new agreement -- not the MOU
21 that you contend wasn't timely withdrawn from, but a new
22 agreement was not signed by AMS and Local 8, correct? As a
23 result of those meetings with Mr. Ron Karp.

24 A. That's correct.

25 Q. Okay. So you developed a relationship with Mr. Ron Karp

1 that was a fairly good working relationship, correct?

2 A. Absolutely.

3 Q. All right. And your experience with AMS, and working
4 with them when they were -- when there was no dispute as to
5 whether they were under an MOU with Local 8, was a fairly
6 good relationship, wasn't it?

7 A. Very positive relationship.

8 Q. All right. In fact, AMS, while you were the field rep,
9 would sometimes reach out to you to ask for masons to be sent
10 over to AMS jobs, correct?

11 A. That is correct.

12 Q. So when you claim that you went on to AMS jobsites after
13 the petition was filed in late April of 2016, why didn't you
14 contact Mr. Ron Karp to inform him of what you now claim was
15 happening on those jobsites?

16 A. My direct contact was through Marc Carney. So --

17 Q. That wasn't my question, sir. My question was you
18 developed a rapport with Mr. Ron Karp. You had a good
19 working relationship with him. Why didn't you contact him,
20 sir, and tell him that you had been told by Mr. Carney or
21 others that you were no longer welcome on an AMS jobsite?

22 A. I don't have the answer why I didn't do it. It wasn't
23 my normal protocol of how I spoke to AMS. All my
24 conversations weren't directly with Mr. Ron Karp or
25 Mr. Richard Karp, so this was something that I did through

1 the chain of commands. It just --

2 Q. And you understood that Mr. Carney -- by your testimony,
3 you're claiming that he said you're no longer welcome. Now,
4 he never said that directly to you, did he?

5 A. Yes, he did.

6 Q. Okay. So when did he tell you that directly?

7 A. At the Tampa Yacht -- at the University of Tampa, I
8 apologize.

9 Q. All right. So I'm going to break that down in a few
10 minutes, but when he allegedly told you that, per your
11 testimony, why didn't you pick up the phone and call Mr. Ron
12 Karp or e-mail him and tell him that Mr. Marc Carney had done
13 that?

14 A. I don't have a reason, to answer your question.

15 Q. Do you understand that Mr. Carney is a trustee in your
16 union?

17 A. He was at one time, that is correct.

18 Q. All right. You understand that he's the sergeant-at-
19 arms in your union, correct?

20 A. He was at one time. That is correct.

21 Q. All right. And so your contention is, is that somebody
22 that once was a trustee, was a sergeant-at-arms, and for all
23 you know, is still a current member of the Union?

24 A. For all I know, could be a current member of the Union,
25 that is correct.

1 Q. Was telling you, you are no longer welcome; that's your
2 testimony?

3 A. That's correct.

4 Q. Okay. Now, did you have a relationship with Mr. Richard
5 Karp?

6 A. I did.

7 Q. All right. Why didn't you pick up the phone and call
8 Mr. Richard Karp and tell him what you're now telling His
9 Honor?

10 A. Again, that wasn't the field of -- chain of commands as
11 how I operated.

12 Q. All right. So do you acknowledge that you were
13 frequently allowed on AMS jobsites prior to this petition
14 being filed?

15 A. That I was allowed?

16 Q. Yes.

17 A. Yes.

18 Q. All right. And you -- do you recall that your
19 visitation was limited to times when it was non-working time,
20 such as breaks or lunch, before or after the day started?

21 A. No. To be honestly clear, that is something, out of
22 respect, that I developed.

23 Q. Sure.

24 A. So, you know, holding AMS and the ownership in high
25 regards that I had, that was something that I mutually came

1 up with Marc Carney, the saying that I knew how it was to run
2 jobs and be interrupted in the production of what that
3 entailed. So out of respect, that was something that I said,
4 I will try to hit these jobsites before work, break time,
5 quitting time, after work.

6 It was not at their request. It was something that I
7 offered up in respect to the Company as far as, you know, the
8 production of jobsites.

9 Q. All right. But you also understood that the
10 superintendents, back when you were a superintendent in 2012,
11 were paid bonuses for the jobs being completed in advance and
12 ahead of schedule, correct?

13 A. No, sir.

14 Q. Do you remember providing an affidavit to the Board,
15 dated March -- I'm sorry June 16th, 2016, in this matter?

16 A. Yes, I do.

17 Q. And do you remember having included information about
18 superintendents being paid bonuses on jobs?

19 A. When you asked the question, you were talking about a
20 time frame earlier than when the bonuses came into play.
21 They weren't always in effect, to the best of my knowledge,
22 when I started there. That was something that came in later
23 to play during my employment.

24 Q. All right. And so when did you -- when do you remember
25 them coming in to play?

1 A. To be quite honest, I think it was time, around the
2 start of the Daytona Bethune-Cookman project, or even maybe
3 before -- no, actually, I stand corrected, at the Universal
4 Studio project that I ran.

5 MR. HEARING: All right, so let me direct the witness to
6 paragraph 9 of the affidavit presented to the Board on June
7 16th, 2016.

8 MS. LEONARD: What page?

9 MR. HEARING: It's on page -- no, it's not numbered. It
10 says, at the top, on the fax, page 4. It's --

11 MS. LEONARD: Oh.

12 MR. HEARING: -- paragraph 9.

13 MS. LEONARD: That has --

14 MR. HEARING: Not yours. It's the --

15 MS. LEONARD: Okay. The Union one.

16 MR. HEARING: -- the affidavit provided to the Board in
17 a different form than a Board affidavit. I'll just make sure
18 you all catch up.

19 MS. LEONARD: Thank you.

20 MR. HEARING: May I approach?

21 Q. BY MR. HEARING: Take a moment to read paragraph 9. And
22 then let me know when you're finished reading.

23 A. Yes, sir.

24 Q. All right. So do you recall, in an affidavit to the
25 Board dated June 16th, 2016, in paragraph 9, stating,

1 "Superintendent foremen maintained hours of employees for
2 payroll purposes, permitted or disallowed absences from work
3 and recorded the same, and maintained records for supplies
4 and equipment. If a job was not on target for completion,
5 upper management held the superintendent foreman of the job
6 responsible for the poor performance.

7 "Additionally, if the job was successful, the Employer
8 has paid bonuses only to the superintendent foreman for that
9 project. Bonuses were paid on the last job I managed for the
10 Employer, but I left before the bonus was paid. Marc Carney
11 told me that the superintendent foreman received bonuses for
12 that job."

13 You remember that?

14 A. Yes, I do.

15 Q. Now, so vis-à-vis your prior testimony today, is it --
16 was it -- at the time that you were a foreman, you were paid
17 bonuses, right?

18 A. I never received a bonus.

19 Q. All right. But you understood the Company paid bonuses
20 to superintendents?

21 A. There was talk about it. I have no knowledge that they
22 ever paid bonuses to anyone. It was all hearsay, passed down
23 the line per conversation with Marc Carney. Do I have any
24 evidence or recollection that any superintendent was paid a
25 bonus? Absolutely not.

1 Q. But you swore under oath here that additionally, if the
2 job was successful, the Employer has paid bonuses only to the
3 superintendent foreman for that project.

4 A. That's what I was told.

5 Q. Okay. But you didn't make that clear in the affidavit,
6 did you?

7 A. Apparently not.

8 Q. All right. So now the reason I asked those questions
9 is, is that you say that your practice was, out of respect
10 for AMS, that you wouldn't go on the job during the working
11 time. But you understood, did you not, sir, that the
12 superintendent would be held accountable if he allowed
13 someone to come on and disrupt the work during working time?

14 A. I was invited, at most times, by the superintendents to
15 come out there.

16 Q. Okay. And the superintendents like Brian Canfield?

17 A. Not necessarily Brian Canfield, but --

18 Q. Well, who?

19 A. Oh, Todd Wolosz has called me numerous times to come out
20 and pick up a check for him to pay his dues. So I've been
21 invited to jobsites by their foremans. Danny Booth.

22 Q. Okay. Now, let's see if you can get back to my original
23 question --

24 A. Sure.

25 Q. -- about this, that you understood that you were to not

1 interrupt the masons while they were working during working
2 time, correct?

3 A. Again, that was something that I did out of respect. It
4 was not something that was set forth to me not to do.

5 Q. All right. So you never had a situation, then, where
6 you actually talked to them during working time, or somebody
7 had to instruct you not to, because of your practice of, out
8 of respect for the Company, you just didn't do it, correct?

9 A. Say that again.

10 Q. Sure. You never had an actual situation where you were
11 told not to interrupt the working of the masons? Because of
12 your respect to the Company, you never tried to do that, by
13 your testimony, correct?

14 A. It could have happened. I don't recall it.

15 Q. All right. Well, if you -- how does that -- how do you
16 explain, then, that out of your respect for the Company, that
17 you never -- that you didn't interrupt the working men, and
18 now you say it could have happened? Did it happen or not,
19 sir?

20 A. Did someone --

21 Q. Did you interrupt the working men when they were working
22 on a job?

23 A. Absolutely not.

24 Q. All right. And the claim that you have about going to
25 multiple jobsites and being told that you were no longer

1 welcome, or words to that effect, did you tell the Board in
2 your affidavit to the Board that there were multiple jobsites
3 where you were told you were no longer welcome?

4 A. Yes. I think I did.

5 Q. All right. I'm going to direct your attention to the
6 affidavit, confidential witness affidavit provided to the
7 Board on or about June 15th, 2016, to Board Agent Rafael
8 Aybar. Do you remember giving a 11-page affidavit to the
9 Board on or about that date?

10 A. Yes, sir, I do.

11 Q. All right. Turning your attention to --

12 MR. HEARING: Counsel's attention to page 9. May I
13 approach, to show the witness?

14 JUDGE ROSAS: Uh-huh.

15 Q. BY MR. HEARING: If you read from the top of page 9,
16 line 1, down through to, and on into page 10, line 3, and let
17 me know when you've finished reading that, please.

18 A. Sure.

19 Yes, sir.

20 Q. All right. Now, let me have that back, if I may.
21 You've had an opportunity to read through it?

22 A. Yes, sir.

23 Q. All right. I hope I have you on the right page. That's
24 all right. I can find it back. So the visit to the
25 University of Tampa jobsite that you testified to earlier,

1 you started to state that Mr. McNett told you -- I think you
2 said, told you to take a picture of the posting, regarding
3 the election?

4 A. That's correct.

5 Q. And your response was what?

6 A. Sure. I took a picture of the posting.

7 Q. Okay. And then what happened?

8 A. Then I was asked to leave the jobsite.

9 Q. By whom?

10 A. Mr. Brent McNett.

11 Q. All right. And what did he say exactly?

12 A. I asked him who was authorizing that to be done.

13 Q. No, sir. What did Mr. McNett say, exactly, with regard
14 to you being asked to leave the jobsite?

15 A. Well, exactly, I don't know if I can put it exactly in
16 the words that he used, but it was that I was no longer
17 welcome to visit the jobsite.

18 Q. All right. So not being able to recollect his exact
19 words, all you can tell us is, is generally, you were no
20 longer welcome on the jobsite; that's your recollection?

21 A. There was a long conversation that day, between all of
22 us, and that's summing it up in a nutshell, that yes, I was
23 no longer going to have access to the jobsite.

24 Q. Okay. So turn -- let me turn your attention to your
25 affidavit, on page 8, lines 6 through 9, and see if I can

1 refresh your recollection of what his exact words were.

2 A. Sure.

3 Q. Can you read line 6, starting with "However," through
4 before "Conex door."

5 A. Yes, sir.

6 Q. Have you read that?

7 A. I have.

8 Q. All right. So now do you recall that his exact words
9 were, quotations, "Go ahead, take your picture of the
10 election notice," which was posted on the Conex door, "then
11 I'm going to have to ask you to leave the jobsite" --

12 A. That's correct.

13 Q. -- end quotations. That's what he said to you, right?
14 Yes?

15 A. Yes, you're -- yes.

16 Q. And do you recall that that's because the men were
17 working?

18 A. No, sir. That was approximately quitting time that day.

19 Q. Okay. And --

20 A. Not approximately. It was quitting time that day. So
21 the men were not working. That was approximately 3:30 in the
22 afternoon.

23 Q. And so you walked on site at approximately 3:30 in the
24 afternoon?

25 A. Yes, sir.

1 Q. And the men, where were they? If it was quitting time,
2 where were they?

3 A. They were on their way leaving the jobsite.

4 Q. All right. So you weren't prevented from talking to
5 them as they were leaving the jobsite, were you?

6 A. They were going out a different entrance of where I came
7 in, so --

8 Q. But you had every opportunity -- nobody retained you
9 there. You had every opportunity to go to that other
10 entrance and talk to them, correct?

11 A. I could have. But there was a conversation I pursued
12 with myself, Mr. McNett, and Mr. Carney, which by the time
13 the conversation ended, they left.

14 Q. Okay. So, but you had the option not to pursue that
15 conversation. You could have just walked over to the
16 employees, correct?

17 A. No, sir. That's not --

18 Q. What, Mr. Carney and --

19 A. That's not correct.

20 Q. -- Mr. McNett made you stay there and talk to them?

21 A. They didn't make me stay there. However, if I would
22 have had to get to where the employees were exiting the
23 jobsite that day, I would have had to walk through the
24 jobsite, and they were not allowing me to walk through the
25 jobsite. So to answer your correctly -- answer the question

1 correctly is I couldn't access the employees.

2 Q. Oh, but you could have walked to -- what entrance were
3 you trying to use?

4 A. There was an entrance -- I don't know whether it was
5 north, east, south, or west, but there was two entrances on
6 the back side.

7 Q. And where was the parking lot that you parked in?

8 A. I parked in the parking lot where the Conex was.

9 Q. Okay. And the -- where did the masons park?

10 A. I can't testify to where the masons parked, if they
11 parked in a parking garage, the street.

12 Q. Okay. So you didn't go back out where you parked to see
13 if the masons that were leaving went to the same area where
14 you parked, correct?

15 A. That's correct.

16 Q. All right. Now, this conversation then ensued there, is
17 that -- how long did that last?

18 A. Oh, we were there for quite some time. I would say
19 approximately an hour.

20 Q. And you had someone else with you; is that correct?

21 A. That is correct.

22 Q. Who was that?

23 A. Mr. Marvin Monge.

24 Q. Marvin Monge?

25 A. Yes, sir.

1 Q. Can you spell that?

2 A. First name?

3 Q. Yes.

4 A. M-a-r-v-i-n. Last name M-o-n-g-e, to the best of my
5 knowledge.

6 Q. All right. And what was his role with you, if any?

7 A. He's an IU organizer.

8 Q. All right. And did he witness what was said to you by
9 Mr. Carney and/or Mr. McNett?

10 A. Yes, he did.

11 Q. All right. And do you recall whether he had the
12 opportunity to walk back out to the parking lot to see if any
13 of the masons that were leaving were available to talk to?

14 A. Again, I think they exited in a parking lot that we
15 would have had to go through the jobsite to get to them.

16 Q. Do you recall whether Mr. Monge went back out where you
17 guys came from, to see if the masons were there?

18 A. I don't recall what Mr. Monge did.

19 Q. He stayed there for the hour or so conversation you had?

20 A. Yes, he did.

21 Q. Did you say to Mr. McNett, who was telling you to say
22 that?

23 A. Yes, sir.

24 Q. And he said, I'm telling you?

25 A. That is correct.

1 Q. And then you said, are you sure it's not someone in your
2 office?

3 A. I don't recall the exact words, but that could have been
4 said.

5 Q. And do you remember him saying no?

6 A. That's correct.

7 Q. Do you recall saying, you've always let me talk to them
8 before, to Mr. McNett and/or Mr. Carney?

9 A. Yes, sir.

10 Q. All right. And do you recall Mr. McNett and Mr. Carney
11 saying that lunch time or break time had never been
12 questioned? They'd never questioned it.

13 A. I'm not sure exactly what you --

14 Q. You remember them saying that back to you?

15 A. That that was the only time I was allowed out there?
16 I'm not sure what you're --

17 Q. No, sir. In this conversation that you had for about an
18 hour --

19 A. Yes, sir.

20 Q. I'm now asking you about what happened in the
21 conversation.

22 A. Okay.

23 Q. And after you said, you've always let me talk to them
24 before, isn't it true that Mr. McNett said, at lunch time or
25 break time, I've never questioned it?

1 A. I think Marc Carney made that statement. I could be
2 wrong. One of the two made that statement.

3 Q. Okay. And then did you say, let's go over here and
4 talk, and then walked over to your car, which was in the
5 parking lot?

6 A. Correct. It was in one of the parking lots. Yes.

7 Q. All right. And then it was there that you and
8 Mr. McNett and Mr. Carney and Mr. Monge spoke, standing
9 around for about 45 minutes; is that correct?

10 A. That sounds correct. Yes, sir.

11 Q. All right. And so you believe that you came at the time
12 that the employees were leaving?

13 A. That is correct.

14 Q. And you believe that was 3:30?

15 A. Yes, sir.

16 Q. And do you know whether the employees knocked off at
17 3:30 that afternoon?

18 A. They did. I know they were working 10 hours a day on
19 that job, and quitting time was at 5:30, for the most part.
20 But I can say, on that day -- well, I can't accurately say.
21 I know we got there, and whether they worked an 8- or 9-hour
22 day that particular day, they were working 10s on that
23 project, and they were also working 8s on that project.

24 Q. So some of them would have been leaving at 3:30,
25 correct?

1 A. That's correct.

2 Q. And what do you recall, if anything, being said by
3 Mr. Carney during that conversation?

4 A. I think he was upset about the situation that was going
5 on in regards to the Union and AMS, health insurance
6 questions.

7 Q. Did he ask you about what it would mean for himself, his
8 own health insurance?

9 A. Whether he did or didn't that day, I don't recall, but
10 it most likely did.

11 Q. At some point, he came and asked you questions about his
12 union health insurance, correct?

13 A. That's correct.

14 Q. All right. And you provided him answers?

15 A. That's correct.

16 Q. Okay. The contractor at that site, on that day that you
17 had this conversation with Mr. McNett and Mr. Carney, that
18 was EWI; is that correct?

19 A. I'm not aware of that.

20 Q. You don't know the general contractor?

21 A. I couldn't testify to that.

22 Q. All right. And do you know whether the general
23 contractor had a no solicitation policy on its construction
24 site?

25 A. I'm not aware if they did. If it was, it was posted at

1 the other gate that I wasn't at. The gate that I'm referring
2 to that day, there was not.

3 Q. Okay. And did you ever inquire of the contractor for
4 that jobsite whether you could have their permission to come
5 on to their construction site?

6 A. No, sir, I did not.

7 Q. All right. And do you understand that that construction
8 site had a no trespassing sign up?

9 A. I didn't -- I did not see that. I wasn't aware of that.

10 Q. Did you see the ABC sign up, as you've probably seen
11 many times on other jobsites, about limiting access to the
12 jobsite?

13 A. Again, if it was, it was not posted at that gate.

14 Q. All right. So then, is there anything else about that
15 conversation that day with Mr. McNett and Mr. Carney that you
16 recall that you haven't told us about?

17 A. Again, it was a lengthy conversation, like I said, for
18 45 minutes. If -- without reviewing it, I couldn't say to
19 detail. They were strongly upset about what was transpiring
20 between the Union and their health insurance, indication
21 of -- they were accusing the Union of stealing money from
22 them. Mr. McNett was also making accusations that he worked
23 several years and no hours were reported on him, referring
24 that, you know, maybe the Union was not the one that was
25 reporting accurately on his behalf.

1 Q. Did you conduct any investigation into what Mr. McNett
2 or Mr. Carney were saying about their union health insurance?

3 A. Absolutely.

4 Q. And what'd you find out?

5 A. That there were periods of time that Mr. McNett was not
6 reported on.

7 Q. All right. So what'd you do about it?

8 A. What did I do about it?

9 Q. Yeah.

10 A. We obviously made a record of it.

11 Q. What do you mean, a record of it? What record?

12 A. Well, it was noted in -- you know, that there were times
13 that we feel that he had worked there, by his own admission,
14 that there were no hours reported for him. So he wanted to
15 know his accurate pension hours. So we went back and
16 researched his pension hours in the years that were in
17 question.

18 Q. And we covered all that. What's the record that was
19 made of it?

20 A. I take that back. I don't think there was any written
21 record. It was oral conversation.

22 Q. All right. So there's no record of you relating that,
23 the results of that investigation to AMS; is that correct?

24 A. That's correct.

25 Q. All right. Now, you mentioned the Tampa yacht club, the

1 Westshore Yacht Club jobsite that you said that Mr. Hale
2 spoke to you; is that correct?

3 A. That's correct.

4 Q. Do you remember the exact words that Mr. Hale used that
5 day?

6 A. Not the exact words, no.

7 Q. What generally did he say to you?

8 A. Please get off my jobsite.

9 Q. All right. And on that day, you were actually up where
10 the men were working; is that correct?

11 A. That is correct.

12 Q. And you were -- this was -- was this on May 10th of
13 2016?

14 A. It could have been. I don't know the day exactly,
15 but --

16 Q. Well, I'll show you your affidavit to refresh your
17 recollection. I had you read it a moment ago.

18 A. Okay.

19 Q. Page 9, line 1. Let's see if that refreshes your
20 recollection of the day when you had this conversation --

21 A. Sure.

22 Q. -- with Mr. Hale. It was what day?

23 A. May 10th.

24 Q. All right. Of 2016, correct?

25 A. That is correct.

1 Q. And with you that day was also Mr. Marvin Monge, right?

2 A. That is correct.

3 Q. All right. You stated that you were told by Mr. Hale
4 that, "We had to leave the jobsite, and we could not be on
5 the jobsite." Is that your recollection of what his words
6 were?

7 A. Yes, sir. That's correct.

8 Q. And it occurred between 9 a.m. and lunchtime; is that
9 correct?

10 A. That sounds about right. Yes, sir.

11 Q. All right. Well, that's what you said in your
12 affidavit. You remember reading it moments ago?

13 A. Yes, sir.

14 Q. All right. And that was while the men were working; is
15 that correct?

16 A. That's correct.

17 Q. All right. So you testified earlier today that out of
18 respect for AMS, you didn't go on to the jobsites while the
19 men were working and try to talk to them. But you did so
20 here, on May 10th, 2016, by your testimony here today, and
21 what you put in this Board affidavit, correct?

22 A. That's correct. What I stated is I tried not to. At
23 all times, when I'm visiting jobsites throughout the day, it
24 is not possible to hit them exactly at break time, lunch
25 time, or quitting time. So sometimes, if they took break at

1 9 or 10 or whatever it would be, if I came a little bit
2 before or after that, it's definitely possible. So I didn't
3 say that I didn't go there other times than that. I tried,
4 out of respect, to do that.

5 Q. Okay. So with that clarification, then who else, on
6 May 10th, 2016, was allowed to come up in the working area
7 while the men were working and solicit them for anything?

8 A. Who else?

9 Q. Yeah. Who, if anyone, was allowed to come up there
10 where they were working, on May 10th, 2016, and solicit them
11 for anything?

12 MS. WALKER: Objection. It's argumentative.

13 JUDGE ROSAS: Who else? You're asking about who else?

14 MR. HEARING: Yes. Who, if anyone else?

15 Q. BY MR. HEARING: You came up there and tried to talk to
16 the men and were told you couldn't, correct?

17 A. I didn't try to talk to the men.

18 Q. I thought that's what you were saying, that you were
19 prohibited access to the men --

20 A. That's correct.

21 Q. -- that day, correct?

22 A. Correct.

23 Q. So who was permitted access to the men while they were
24 working that day, in the area where you went to?

25 JUDGE ROSAS: Sustained as to who else. Speculative.

1 I'm not --

2 MR. HEARING: Sure. Let me ask, just --

3 JUDGE ROSAS: -- getting any foundation.

4 Q. BY MR. HEARING: Was there anyone from the food truck
5 that was allowed up there while you were up there trying to
6 talk to the men?

7 A. I can't testify who else was up there at that time.

8 Q. All right. You testified on direct questioning by
9 Ms. Walker that you believe that other groups were allowed
10 access to the men on these jobsites after you have been
11 denied access. And the example that you gave was the food
12 trucks. You remember?

13 A. Yes, sir. I do.

14 Q. All right. Now, so what I want to be clear is, is that
15 on this jobsite where Mr. Hale was, there at the yacht club,
16 where was the food truck, if there was one?

17 A. I don't recall if there was one that particular day or
18 at that time.

19 Q. All right. Was there -- do you have any recollection of
20 a food truck being on the Westshore Yacht Club while -- on
21 May 10th or thereafter before the election was held?

22 A. No, I don't.

23 Q. All right. The same question with the prior job, where
24 you had the conversation with Mr. McNett and Mr. Carney. Do
25 you have any specific recollection of the food truck, a food

1 truck being on the UT jobsite after the petition was filed?

2 A. No, sir, I don't.

3 Q. All right. And then moving on -- actually, let me ask a
4 couple more questions about this conversation with Mr. Hale.
5 You asked Mr. Hale who was saying this, and he replied that
6 it was him; is that correct?

7 A. That's correct.

8 Q. That's what you had previously indicated. And the
9 conversation ended; is that right?

10 A. That's correct.

11 Q. All right. Do you remember that after that conversation
12 ended, that you talked to the employees working up on the
13 third floor of Building 1 after he had told you, you need to
14 leave?

15 A. No, sir. I don't recall that.

16 Q. Do you remember talking to them, those employees, on the
17 third floor of Building 1 before he spoke to you?

18 A. I may have said hello or goodbye on passing, but I did
19 not stop and talk to those employees that day.

20 Q. After he asked you to leave, did you talk to masons
21 Flynn Gamble, Zion Anderson, and apprentice Henry Smalls on
22 the jobsite?

23 A. I don't recall. And if it was, it was a greeting,
24 leaving, or -- either coming on, I may have said hello to
25 them on my way in. Or after he asked us to leave, I may

1 have -- they may have been trying to ask me questions as they
2 normally would when I visit a jobsite. And I could have
3 replied that, look, I'm not allowed to be here. We'll talk
4 about it at a later time. So --

5 Q. You didn't --

6 A. If there was a conversation with those gentlemen, it was
7 very brief.

8 Q. Do you remember doing it for 10 to 15 minutes that day?

9 A. Oh, absolutely not.

10 Q. Do you remember Mr. Hale having to say it loud enough
11 for you to hear it from far away, that he had asked you to
12 leave and stop talking to those gentlemen?

13 A. That's not correct.

14 Q. That's not true?

15 A. Not to the best of my knowledge. There was a
16 conversation, and he -- we both walked away from each other.

17 Q. All right. Now, then the next example that you gave --

18 MR. HEARING: Your Honor, I'll note the hour. I'm --
19 it's 12:10. I still have a long ways to go, so I'll keep
20 going. I'll stop --

21 JUDGE ROSAS: Okay.

22 MR. HEARING: -- whenever your pleasure is, but --

23 JUDGE ROSAS: Let's take a break now, and we'll
24 reconvene at 1:15. Okay.

25 MR. HEARING: Great.

1 (Whereupon, at 12:11 p.m., a lunch recess was taken.)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A F T E R N O O N S E S S I O N

A F T E R N O O N S E S S I O N

(Time Noted: 1:15 p.m.)

JUDGE ROSAS: Let's silence all devices, please.

MR. HEARING: May I proceed?

Q. BY MR. HEARING: All right. So the next incident that you testified about when you said, your words were that he told you, you were no longer welcome on site, was a hotel project in St. Pete across from Bay Pines. You remember that testimony?

A. Yes, sir. I do.

Q. Do you remember exactly what Mr. Canfield said in that interchange with him?

A. I can't recall verbatim word for word, no.

Q. Well, what do you remember specifically him saying?

A. That I was no longer allowed out on the jobsite.

Q. All right. And were there any witnesses to that?

A. There was.

Q. Who?

A. Marvin Monge.

Q. Same individual as the other place?

A. Yes. That's correct.

Q. Or places, two places now?

A. Yes, sir.

Q. Okay. And was Mr. Monge, was in -- was he able to hear Mr. Canfield?

1 A. Yes, he --

2 Q. Say the same thing that you heard?

3 A. Yes, he was.

4 Q. All right. And you remember what time of day that was
5 that you went there?

6 A. Again, that was approximately quitting time that day.

7 Q. Could it have been 2:30 p.m.?

8 A. It could be. I think it was closer to 3:30, but --

9 Q. Was this called the Holiday Inn Express job? Does that
10 refresh your recollection?

11 A. Yes, sir.

12 MR. HEARING: May I approach to get the affidavits?

13 Thanks.

14 Q. BY MR. HEARING: At the time -- all right. And by the
15 way, I'm not sure we established a date. This was on or
16 about May 24th, 2016, when this occurred; is that right?

17 A. That sounds about correct.

18 Q. Do you remember giving an affidavit to Board Agent Aybar
19 on 6/15/16, wherein you said it occurred on May 24th, 2016?

20 MR. HEARING: May I approach?

21 Q. BY MR. HEARING: Looking down at line 16, I believe.

22 A. Correct. It says, on or about.

23 Q. Okay. Thank you. And you testified that you had
24 Mr. Monge with you, moments ago?

25 A. That's correct.

1 Q. Let me show you your affidavit again, if I may approach,
2 on page 9, looking at line 16 through 18, that first sentence
3 there. Take a moment. Look at that. See if that refreshes
4 your recollection as to who was actually with you on that
5 jobsite.

6 A. I remember clearly who was with me.

7 Q. All right, who was it?

8 A. Marvin Monge. There -- the question you asked is, who
9 was in earshot.

10 Q. No, sir. I just asked --

11 A. Okay.

12 Q. -- do you prefer --

13 A. I know exactly who was with me that day, sir.

14 Q. Okay. So it was more than Mr. Monge; isn't that
15 correct?

16 A. That's correct.

17 Q. All right. So on May 24th, 2016, it was Keith Hocevar,
18 International Union representative, Ernest Adame or Adame.

19 A. Adame. You -- that's correct, sir.

20 Q. Adame, International Union organizer, and you went to an
21 AMS project at St. Petersburg, Florida, is what you put in an
22 affidavit to the Board on June 15th of 2016. You made no
23 mention whatsoever of Mr. Monge being with you at that site,
24 correct?

25 A. You're correct. I think I misspoke with Marvin Monge on

1 that day. It was Keith Hocevar and Ernest Adame. I thought
2 Marvin was present that day, but looking back on it, I don't
3 think he was.

4 Q. So you made a mistake when you made that testimony here
5 under oath moments ago?

6 A. Yes, sir.

7 Q. All right. And you believe that your sworn testimony to
8 the Board Agent Aybar on June 16th of 2000 -- I'm sorry, let
9 me make sure I get the date right, June 15th of 2016 -- was
10 accurate?

11 A. That's correct.

12 Q. All right. Now, you attribute specific words in that
13 affidavit to Mr. Canfield, correct?

14 A. Correct.

15 Q. You remember providing quotations as to what he said on
16 the day that you gave this affidavit, sir?

17 A. Not right now, I do not. No, that's correct.

18 Q. You don't remember giving quotations then? Not what's
19 in the quotations, but do you remember giving an exact
20 quotation as to what Mr. Canfield said?

21 A. I'm sure I did, but I couldn't recall word for word what
22 it is right now.

23 MR. HEARING: May I approach and show him?

24 Q. BY MR. HEARING: Would you read line 18, starting with
25 "Keith and I," down to the end of what you attribute to

1 Mr. Canfield, there on --

2 A. Sure.

3 Q. -- line 20, to yourself, and then I'm going to ask you a
4 question. Are you reading beyond that, sir?

5 A. What line did you ask me to stop at? I apologize.

6 Q. Eighteen to twenty. Eighteen to twenty.

7 A. Yes.

8 Q. Okay. So now that you've read that, you see that you
9 gave an exact quotation to the Board agent on June 15th of
10 2016, correct?

11 A. That's correct.

12 Q. Did you ask for a copy of your witness affidavit that
13 you signed that day --

14 A. Yes, I did.

15 Q. -- from the Board agent? And you kept a copy?

16 A. Yes, I did.

17 Q. Did you review it before today?

18 A. I haven't looked at that recently, to be honest.

19 Q. Okay. So when's the last time you looked at it?

20 A. Probably several weeks ago.

21 Q. All right. And when you looked at it several weeks ago,
22 did you believe that what you provided to Mr. Aybar that day
23 on June 15th of 2016 was a correct recitation of what
24 Mr. Canfield said?

25 A. Yes, that's correct.

1 Q. Okay. You testified earlier that you told Mr. -- or
2 Mr. Canfield told you, you're no longer welcome on the site
3 or the parking lots. You remember that testimony earlier
4 today?

5 A. Yes, sir. I do.

6 Q. All right. And yet here, you told Board Agent Aybar he
7 said, "What are you doing here? You know you can't be here,"
8 in quotations. That's what he told you, correct?

9 A. Correct.

10 Q. All right. And for him to say you can't be here, it
11 would be entirely justified for him to do that if you are
12 interrupting the work of the men, correct?

13 A. If he felt I was interrupting the men, I'm sure that
14 would be his prerogative, yes.

15 Q. All right. And when he said that to you, you asked him,
16 who has said that we're not allowed on the jobsite; is that
17 right?

18 A. That is correct.

19 Q. And he said what?

20 A. He referred that Marc Carney had said that.

21 Q. All right. And so previously I asked you, did Marc
22 Carney tell you personally whether you were not allowed on a
23 jobsite. You remember that question earlier today?

24 A. Yes, sir. I do.

25 Q. So when did Marc Carney tell you personally that you

1 weren't allowed on a jobsite?

2 A. Whether it was the discussion at the University of Tampa
3 or later phone calls between Marc Carney and I, I can't be
4 for certain which one it was, but --

5 Q. Now, you're remembering phone calls from Mr. Carney,
6 where he may have told you --

7 A. Me and Mr. Carney spoke on a daily basis many, many
8 times.

9 Q. Do you have a specific recollection of Mr. Carney
10 talking to you on the phone and talking about this subject?

11 A. Not that I could testify under oath today.

12 Q. All right. Now, do you remember, in your other
13 affidavit that you provided to the Board, the one that's
14 dated June 16th, 2016, in paragraph 29 --

15 MR. HEARING: May I approach the witness?

16 Q. BY MR. HEARING: You remember providing this affidavit
17 on April 16th, 2016, and providing paragraph 29, if you'd
18 read that to yourself, and let us know when you're done?

19 A. Sure. Yes, sir.

20 Q. All right, you've read that?

21 A. Yes, sir.

22 Q. You remember giving this sworn testimony?

23 A. Yes, I do.

24 Q. All right. Do you remember stating that, "During the
25 critical period, the Employer told me to leave the premises

1 of a jobsite that I was visiting, including the parking lot."

2 You remember that testimony?

3 A. Yes, sir.

4 Q. So in this affidavit, the -- you identify just a single
5 jobsite that you were asked to leave from; is that correct?

6 A. That's correct.

7 Q. Yet today, you now are telling our Judge that there were
8 at least two other, two other that we've already covered
9 jobsites, other than Mr. Canfield's jobsite; is that correct?

10 A. That's correct. I don't know which one I was referring
11 to at that time, but yes, sir, that is correct.

12 Q. All right. Well, that was going to be my next question
13 is, is where was the jobsite where the Employer told you to
14 leave the premises that you were visiting, including the
15 parking lot, that you refer to here in paragraph 29?

16 A. That particular conversation, I think, was in reference
17 to the Holiday Inn in St. Pete.

18 Q. All right. Would that be Mr. Canfield's?

19 A. Yes, sir.

20 Q. So the one we've already discussed?

21 A. Yes, sir.

22 Q. All right. So why didn't you put in this affidavit any
23 more specificity as to which site you were referring to?

24 A. I can't recall why I didn't do that at that time.

25 Q. All right. And you'd given this affidavit on the 16th

1 of June of 2016, the day after you gave the affidavit to the
2 Board agent; is that correct?

3 A. It could be. I don't recall the exact dates.

4 Q. Well, I'll show you.

5 A. Okay.

6 Q. The Board agent affidavit is dated --

7 MR. HEARING: If I may approach.

8 Q. BY MR. HEARING: -- May [sic] 15th of 2016; is that
9 correct?

10 A. Yes. That's correct.

11 Q. And then this affidavit that was presented to the Board
12 in this form was given on June 16th of 2016, just the next
13 day; is that right?

14 A. That appears to be correct, yes.

15 Q. So is there any particular reason why you provided more
16 specificity to the Board agent, Mr. Aybar, on the 15th than
17 you put in this affidavit on the 16th, regarding these
18 allegations of being told you have to leave the premises?

19 A. No, I don't recall, you know, why. I may have recalled
20 more conversation on a specific day than I did another day.
21 I can't recall.

22 Q. Is that something that you experience from time to time,
23 sir, that you recall some conversations better some days than
24 other days?

25 MS. WALKER: Objection.

1 JUDGE ROSAS: Sustained. Argumentative.

2 MR. HEARING: All right.

3 Q. BY MR. HEARING: So are you having -- is your
4 recollection good here today?

5 A. It is.

6 Q. All right. Now, with regard to what happened next with
7 Mr. Canfield that day at the Holiday Inn, do you acknowledge
8 that Mr. Canfield told you that it was close to quitting time
9 and they were behind, that the hollow core was scheduled, and
10 therefore you couldn't talk to them?

11 A. Oh, I do not recall that conversation.

12 Q. You don't recall that? All right.

13 A. No, sir.

14 Q. Do you recall that you had indicated to Mr. Canfield you
15 only wanted a couple of minutes to talk to the men?

16 A. Sure. I probably made that statement.

17 Q. All right. And do you recall Mr. Canfield telling
18 that -- you that you could talk to the men after their work
19 was completed?

20 A. He may have said that, but he recanted that statement
21 further on, after that statement may have been made.

22 Q. And how do you know that?

23 A. Because that's what was said, maybe after that
24 particular statement. We were in the parking lot talking to
25 the employees when we were asked to leave the parking lot.

1 Q. Okay. So you think you had more than one conversation
2 with Mr. Canfield that day?

3 A. Yes, sir

4 Q. So tell us, then. I missed that. Tell us how many
5 conversations you had with Mr. Canfield that day.

6 A. I don't know if it was particularly two different
7 conversations or one ongoing conversation as we were walking
8 around, moving throughout the site. But as the --

9 Q. So he allowed you on the site, then?

10 A. For a brief minute, until I was told I was not welcome
11 on the site.

12 Q. But you said, as you were walking around the site. So
13 you walked around the site with Mr. Canfield?

14 A. No, sir. I take that back. Walking from where the
15 first conversation started, back to the parking lot, to my
16 car, not walking around the site.

17 Q. All right. So you had more than one conversation with
18 him as you were walking back to your car, then?

19 A. Like I said, it could be an ongoing conversation or a
20 second conversation that took place.

21 Q. Can you tell us, sir, whether you had one or more
22 conversations with him that day?

23 A. Again, it was either one long, ongoing conversation, or
24 the conversation may have stopped for a brief minute and the
25 conversation ensued. So we can look at it as two

1 conversations if --

2 Q. All right. So moving on from that, then do you recall
3 that, as the masons were preparing to leave that day, that
4 you and Mr. -- I'll just say, the other two union
5 representatives that were with you, do you remember you all
6 talking to the employees about the Union?

7 A. There was an attempt.

8 Q. Okay. And do you remember that one of the gentlemen
9 with you followed mason Lonnie McDonald as he was going to
10 the Conex?

11 A. Yes.

12 Q. And the Conex there on that jobsite was located where?

13 A. In the parking lot.

14 Q. All right. And the Conex there, is that similar to how
15 you described the Conex at UT?

16 A. UT was in the jobsite perimeter fence.

17 Q. Okay.

18 A. This one may have been also, but it was in the parking
19 lot.

20 Q. All right. In fact, it had to be within the perimeter
21 fence, didn't it?

22 A. That's correct.

23 Q. All right. And do you remember who it was that tried to
24 talk to Mr. McDonald? Was it Mr. Adame or Mr. Hovevar?

25 A. I think it was Mr. Hovevar.

1 Q. All right. And do you recall that Mr. Hocevar was
2 telling Mr. McDonald that he needed to join the Union?

3 A. No, sir. I wasn't part of that conversation when those
4 two spoke.

5 Q. All right. So you didn't hear what was said?

6 A. That's correct.

7 Q. All right. How long did those two speak? Did you
8 observe them to speak without hearing the words?

9 A. No, sir.

10 Q. No. How long did you see them talking without hearing
11 the words?

12 A. I wasn't paying attention to what Mr. Hocevar and
13 Mr. McDonald were doing, so I can't testify to that, to be
14 honest.

15 Q. All right. Did you hear Mr. McDonald respond to
16 Mr. Hocevar?

17 A. No, sir. I did not.

18 Q. After that exchange occurred, whatever did occur between
19 Mr. McDonald and Mr. Hocevar, did Mr. Canfield say something
20 to Mr. Hocevar about not harassing the masons?

21 A. Yes. To my knowledge, yes.

22 Q. All right. And saying words to the effect, I don't mind
23 you talking to the men, but don't harass them?

24 A. That's what I was told.

25 Q. By Mr. Canfield?

1 A. I did not hear that. That's what I was told.

2 Q. By whom?

3 A. Mr. Hocevar.

4 Q. Okay. And did Mr. -- did you hear Mr. Canfield say
5 anything back to Mr. Hocevar after that?

6 A. I don't think I did.

7 Q. Okay. Did you ever hear Mr. Canfield tell Mr. Hocevar,
8 you can talk to my guys after work, but you can't harass my
9 guys?

10 A. I think I was told that by Mr. Hocevar. I don't know if
11 I heard that.

12 Q. Okay. You don't recall actually hearing that yourself?

13 A. That's correct.

14 Q. All right. And then do you remember after that occurred
15 that Mr. Hocevar went and talked to some of the other union
16 masons?

17 A. If he did, I can't testify to Mr. Hocevar's actions that
18 day.

19 Q. All right. And then there's this incident with Johnny
20 Wheeler that you testified about. You remember that?

21 A. Yes, sir.

22 Q. The job on 1st Avenue South, townhouse or a condo, you
23 said?

24 A. Yes, sir.

25 Q. Now, Johnny Wheeler was a mason; is that correct?

1 A. That's correct.

2 Q. You called him a straw boss, I think, on your direct
3 examination?

4 A. Yes, sir.

5 Q. And what is a straw boss?

6 A. A straw boss is someone who assists the foreman around
7 the project.

8 Q. Yeah, but it's not a management position within AMS,
9 correct?

10 A. They have straw bosses on their project. How they view
11 it, whether it's a management position, I'm not exactly sure
12 how --

13 Q. Have you ever known a straw boss to be able to fire
14 somebody on the spot?

15 A. Yes. I've had straw bosses where I worked for AMS that
16 were helping me run the projects.

17 Q. Oh, but they did that with your permission, right?

18 A. It depends what supervisor was there at the time. You
19 know, I've had other superintendents that were accompanying
20 me on projects that had just as much authority as I did.

21 Q. So I'm trying to understand, though, your particular
22 instance, you said, I had a straw boss fire somebody in --

23 A. I didn't say that.

24 Q. Oh, okay. So while we're talking about firing someone,
25 you testified on direct that you've fired masons before; is

1 that correct?

2 A. No. I don't recall saying I fired masons before for
3 AMS.

4 Q. Okay. Do you remember saying that when you were a
5 superintendent for AMS, that you had the authority to hire or
6 fire masons?

7 A. Yes, sir.

8 Q. Okay. And so did you ever fire a mason while you were
9 at AMS?

10 A. I do recall one laborer at Universal Studios that I
11 think I terminated, yes.

12 Q. And why'd you terminate him?

13 A. Poor workmanship.

14 Q. Okay.

15 A. Or not poor workmanship. He was a laborer that wasn't
16 performing his duties.

17 Q. All right. And so I assume that you reported that you
18 terminated that employee to AMS management, correct?

19 A. That is correct.

20 Q. Because they had to know to stop paying him, right?

21 A. That is correct.

22 Q. And AMS management confirmed the firing of that
23 employee?

24 A. That is correct.

25 Q. All right. So back to where we were with Johnny

1 Wheeler, you called him a straw buss. Who was the foreman on
2 the job?

3 A. Brian Canfield.

4 Q. And where was he?

5 A. He was at the Holiday Inn.

6 Q. Okay. And so you said you had a conversation with

7 Mr. Wheeler that day where he said what to you?

8 A. That good thing Brian Canfield or Marc Carney weren't
9 present on the site, that if so, they would -- he was
10 instructed to remove us if --

11 Q. Okay. So he didn't actually remove you, did he?

12 A. Yes. He asked us to leave. Yes, sir.

13 Q. Oh, he did? Okay. The men were working at the time?

14 A. No, sir. We didn't encounter any men working at the
15 job.

16 Q. So where were they?

17 A. I don't know that answer.

18 Q. So there was no one to talk to, then?

19 A. We talked to Johnny Wheeler.

20 Q. But there were no other men there that you could talk
21 to?

22 A. I didn't know that at the time when I went there, sir.

23 Q. But now you do know that?

24 A. Yes.

25 Q. How do you know that now, that there were no men there

1 when you went to talk?

2 A. From the conversation that ensued when I got there, with
3 Mr. Wheeler.

4 Q. Okay. So when you got there and talked to Mr. Wheeler,
5 did he tell you there were no men on the job then?

6 A. Yes, he did.

7 Q. Okay. So how was it, then, that you were prevented to
8 talking to the men that day if there weren't any men there to
9 talk to?

10 A. I guess technically we weren't prevented from talking to
11 the men there if there wasn't any there to be talked to.

12 Q. All right. And do you remember in your affidavit
13 referencing at page 9 this incident with Mr. Wheeler? The
14 affidavit to Mr. Aybar. Would it help if I showed you, to
15 refresh your --

16 A. Sure.

17 Q. -- recollection? All right.

18 MR. HEARING: May I approach, Your Honor?

19 JUDGE ROSAS: Sure.

20 Q. BY MR. HEARING: Looking at page 9, line 7 through line
21 15, if you'll read that to yourself, and I'm going to ask you
22 some questions about it.

23 A. Yes, sir.

24 Q. Now, you've read it?

25 A. Yes, sir.

1 Q. All right. So do you recall referring -- well, let me
2 ask you this way. Now that you've read it, you saw that you
3 didn't refer to Johnny Wheeler as a straw boss in this
4 affidavit to Mr. Aybar, did you?

5 A. It appears that I didn't.

6 Q. No, it doesn't appear that it didn't; you absolutely
7 didn't, did you, sir?

8 A. That's correct.

9 Q. All right. Yet today you call him a straw boss. Why
10 are you calling him a straw boss today?

11 A. Because that's what he told me he was.

12 Q. And did you tell the Board agent that that's what he
13 told you he was when you spoke to Mr. Aybar?

14 MS. WALKER: Objection. Lacks foundation that the Board
15 agent even questioned him on that, in that regard.

16 JUDGE ROSAS: Overruled. You can answer it, if you
17 recall.

18 THE WITNESS: Can you repeat the question, please?

19 Q. BY MR. HEARING: Sure. Did you tell the Board agent
20 that he told you he was a straw boss that day?

21 A. No, I did not.

22 Q. So why is it that you are saying that he's a straw boss
23 today? Why is that significant to you today?

24 A. It's not significant to me today compared to that day.
25 It just was a statement that I made.

1 Q. All right. So -- and in this affidavit, you make no
2 mention that there were no employees on the job that day; is
3 that correct?

4 A. That's correct.

5 Q. Did you tell that to the Board agent when you were
6 interviewed this day that you gave this affidavit?

7 A. I don't think I did.

8 Q. So you didn't tell him that, like you told us today,
9 that technically you weren't prevented from speaking to
10 anybody that day because there was nobody there to speak to,
11 correct?

12 A. We were prevented from speaking to people that day and
13 asked to leave that jobsite. Whether there was folks there
14 or not, that's what was said.

15 Q. And do you know who controlled the access of people to
16 that job, I don't think we've identified it by name, but that
17 job on 1st Avenue South where you encountered Mr. Wheeler?

18 A. No, sir. I'm not sure the --

19 Q. Do you know -- go ahead. I'm sorry. I interrupted you.

20 A. Who the general contractor was?

21 Q. Exactly.

22 A. Is that what you're referring to?

23 Q. Yeah.

24 A. Not off the top of my head. No, sir.

25 Q. All right. And do you know whether that general

1 contractor had a fence up around that property?

2 A. Yes, I do.

3 Q. And it -- the answer is then that there was a fence up
4 around the property?

5 A. That is correct.

6 Q. Correct? And access to the property was limited; is
7 that correct?

8 A. Yes. There were several gates that you could access the
9 project by.

10 Q. All right. And do you have any knowledge of any
11 businesses or other people that attempted to gain access to
12 that property for business other than the construction of the
13 property and they were actually allowed access to that
14 property? You understand my question?

15 A. No, I don't, to be honest with you.

16 Q. It didn't look like it, the way you're looking at me.

17 A. No. To be honest with you, I don't.

18 Q. You talked about, earlier today, that you believed that
19 food trucks were on the jobsites. Do you have any knowledge
20 of food truck personnel being allowed access to that jobsite
21 where Mr. Wheeler was?

22 A. No, I can't testify that I do.

23 Q. All right. Turning to Charging Party Exhibits Number
24 25(a) and (b), which is the hard hat stickers, remember
25 those?

1 A. Yes, sir.

2 Q. You may or may not need to look at the exhibit, but I
3 wanted to identify it for the record.

4 A. Sure.

5 Q. Who did you give those to?

6 A. Anybody that wanted them or asked. Whether they were --

7 Q. Masons on AMS jobs?

8 A. Correct.

9 Q. And when did you give those out?

10 A. On multiple jobsite visits.

11 Q. All right. And you were never prohibited from doing so
12 by AMS, were you?

13 A. No, sir.

14 Q. That's correct, you were not prohibited, correct?

15 A. That's correct, sir.

16 Q. All right. You also were allowed to give out shirts.
17 We've got the one shirt over there.

18 MR. HEARING: If I may borrow that, counsel, the neon
19 shirt?

20 Q. BY MR. HEARING: This shirt, which I believe is GC
21 Exhibit 12, pictures of it, you were allowed on AMS property
22 to give out this shirt, correct?

23 A. At one time, that is correct.

24 Q. All right. And you were allowed access to AMS property
25 to give out pizza, correct?

1 A. At one time, that is correct.

2 Q. And you were allowed access on AMC property -- I'm
3 sorry, AMS property to give out Gatorade, correct?

4 A. At one time, that would be correct. Yes, sir.

5 Q. Even on the day that you say that Mr. McNett and
6 Mr. Carney would not allow you access, you actually gave them
7 Gatorade, didn't you, sir?

8 A. I'm sure we did.

9 Q. And you gave other men Gatorade that day, didn't you?

10 A. I don't recall if I gave other men Gatorade that day or
11 not.

12 Q. You don't remember that a couple of them walked right
13 past you while you were talking to them, and they were given
14 Gatorade?

15 A. I don't recall it.

16 Q. Who's Todd Wolosz?

17 A. Todd Wolosz is a superintendent for AMS.

18 Q. And a union member?

19 A. Yes, he is.

20 Q. And you said that you would visit jobs where he was a
21 superintendent. Can you name one job where he was
22 superintendent that you were allowed to visit?

23 A. Oh, he did a school in Riverview. And there was also a
24 project in Sarasota. I know it was on the water. What the
25 name of the project is, right now I don't recall.

1 Q. All right. And those two, can you identify a time frame
2 when the projects were in process?

3 A. No, sir. I don't exactly recall the time frame.

4 Q. Has Todd Wolosz ever prohibited you from coming onto an
5 AMS jobsite?

6 A. No, sir. He has not.

7 Q. All right. You -- General Counsel Exhibit -- if you'll
8 pull those exhibits out, it's the authorization card. I
9 can't remember the number off the top of my head. I want to
10 say it's --

11 MS. LEONARD: Eleven.

12 MR. HEARING: Oh, there you go. I knew it was around
13 12. I'm glad somebody remembers.

14 Q. BY MR. HEARING: Can you put that in front of you. It
15 looks like you've got the CP exhibits there. The General
16 Counsel exhibits are right at the bottom. It's just an
17 authorization card. You remember that?

18 A. Yes, sir.

19 Q. You know what one looks like, right?

20 A. Yes, sir.

21 Q. All right. So if you need to look at it, let us know,
22 but my question of you is, you were able to go on AMS
23 jobsites after the petition was filed and get some of those
24 authorization cards signed, correct?

25 A. That's correct.

1 Q. All right. And can you name one individual that you
2 were not able to get to sign an authorization card because
3 you were shooed off, or told you couldn't come on to the
4 premises that day?

5 A. I couldn't call the individuals by name, but there were
6 people that I couldn't access during this period of time.

7 Q. Okay. And you said that, when you testified about this
8 yesterday, when the Counsel for the General Counsel was
9 questioning you, you were asked how long you were there on
10 site, and you mentioned the Holiday Inn Express job, which is
11 the Brian Canfield job, right?

12 A. That's correct.

13 Q. And you said, it depends, but sometimes 15 minutes to an
14 hour. You remember that testimony yesterday?

15 A. Yes, I do, but not in reference to that project.

16 Q. Okay.

17 A. I would say, it --

18 Q. What project would that have been in reference to?

19 A. All projects in general.

20 Q. Okay. But in relation to collecting signatures for the
21 Union, you testified that you visited all jobsites to do so
22 yesterday. You remember that testimony?

23 A. Yes, sir. I do.

24 Q. All right. And you indicated Bethune-Cookman is one of
25 them, correct?

1 A. That's correct, sir.

2 Q. Westshore Yacht Club was one of them?

3 A. Yes, sir.

4 Q. And University of Tampa, right?

5 A. Correct.

6 Q. All right. And then the Holiday Inn Express is
7 downtown -- or no, you said the downtown St. Pete 1st Street
8 project, right?

9 A. I think that's correct.

10 Q. That's -- is that the Holiday Inn Express?

11 A. No. No, sir.

12 Q. All right. That's the town homes or condos, right?

13 A. That is correct.

14 Q. All right. Do you know how many cards you obtained from
15 those projects?

16 A. An accurate number? No. I could take an estimated
17 guess.

18 Q. What's your estimated guess?

19 A. Fourteen to sixteen.

20 Q. Okay.

21 MR. HEARING: Okay. All right. See if you can find it
22 for me.

23 Q. BY MR. HEARING: Do you remember producing, pursuant to
24 our subpoena, a report that you provided to your supervisor
25 where you indicated how many cards you got signed on these

1 projects?

2 A. I don't recall it, but I'm sure I did.

3 Q. All right. We'll see if we can pull it up in a minute.
4 The petition that you testified about yesterday, RD Exhibit
5 1(a), you -- are you aware that that was dated April 29th of
6 2016?

7 A. I'd have to look back at that one, sir.

8 MR. HEARING: May I call upon Your Honor to pull that
9 out of yours, so --

10 Q. BY MR. HEARING: I just want to establish the date that
11 you filed your petition.

12 A. Yes, sir.

13 Q. It's 4/29/16; is that right?

14 A. That's correct.

15 Q. All right. And did you have any conversation with AMS
16 management before you filed the petition, to tell them that
17 you were filing a petition?

18 A. No, sir.

19 Q. Okay. Did you indicate to Mr. Karp that you would --
20 Mr. Ron Karp when -- because you guys weren't able to work
21 out a signature, a new agreement signature, that you would be
22 filing a petition?

23 A. No, sir. I don't recall that.

24 Q. All right. And if the -- you testified yesterday that
25 you believe that the prior contract's still in existence

1 because it wasn't timely withdrawn. So why file a petition?

2 A. I don't think it was their view that the contract was
3 still relevant.

4 Q. The -- you mean the Company's, AMS's view?

5 A. That's correct.

6 Q. All right. General Counsel Exhibit 14, if you could
7 pull that up from the General Counsel exhibit list, or
8 exhibit pile?

9 A. Which is what pile, this one?

10 Q. Yeah. It's in there. The papers with tags on them.

11 A. Okay.

12 Q. It's the one that looks like this, an agreement.

13 A. I apologize. Without my glasses, I can't see that far,
14 what you just showed me.

15 Q. You need to get your glasses?

16 A. No, sir. I don't.

17 Q. You have them in your pocket.

18 A. Oh, I know I do.

19 Q. Okay.

20 A. I didn't have them on when you asked me that question.

21 Q. It's the Bricklayers Local 1 agreement, 22 pages long.

22 All right, turning to the last page, last couple of pages in,
23 actually, the last -- page 21 and 22 of that document.

24 A. Yes, sir.

25 Q. All right. This is signed by whom, on behalf of the

1 Union?

2 A. Mark Peterson.

3 Q. And do you recognize the signature, who signed on behalf
4 of Advanced Masonry Systems?

5 A. I don't recognize the signature --

6 Q. Okay.

7 A. -- that I would testify to.

8 Q. I'm sorry?

9 A. I don't recognize the signature that I would testify to.

10 Q. Okay. Who do you understand it to be?

11 A. Well, I understand it to either be Mr. Richard Karp or
12 Mr. Ron Karp.

13 Q. All right. And the date is April 26, 2004, and -- but
14 your testimony earlier was that, on the questioning from your
15 counsel, that you believe that the relationship between AMS
16 and Local 8 went all the way back to the late '80s; is that
17 what you said?

18 A. Not Local 8, sir. That'd be Local 1.

19 Q. Local 1? Okay. All right. And this is the Local 1
20 agreement. So on what basis do you make that claim, that
21 there's a relationship back to the late '80s?

22 A. Just from documents that I have seen.

23 Q. Okay. But not here that you could point to, that's been
24 an exhibit entered into evidence?

25 A. I don't think so.

1 Q. All right. And in this document, there's a reference to
2 \$2.75 on page 21 of 22 for health and welfare; do you see
3 that?

4 A. Yes, I do.

5 Q. Remember the math that you did yesterday?

6 A. I certainly do.

7 Q. Was that the math of this 2.75 figure?

8 A. No, sir. It was not.

9 Q. Okay. But it came to 2.75; you remember that?

10 A. No, sir.

11 Q. You testified yesterday that it was \$1.76, and then 99
12 cents, which comes to \$2.75, even in my math, which is pretty
13 bad. So that wasn't a reference to this calculation here for
14 2.75?

15 A. No, sir. It wasn't. There's also monies in there for a
16 JATC or IMI or apprentice training. The two numbers that I
17 quoted were strictly health insurance and pension. So I
18 compliment you on your math, but you're not correct.

19 Q. Well, health insurance and pension, it says health and
20 welfare, and it says 2.75 here.

21 A. I see that, but that's not the last agreement, I think,
22 that was in place.

23 Q. Oh, I'm not contending it was, sir. I'm trying to find
24 out if this is where you got the 2.75 --

25 A. No, that's --

1 Q. -- because the last agreement in place was 2.85, wasn't
2 it?

3 A. That's correct.

4 Q. So there was two 5 cent entries, additional, to the
5 health and the welfare, is that right, on the last agreement?

6 A. I don't recall what you're --

7 MS. LEONARD: Your Honor? I would like to object at
8 this point to the previous few questions. I believe that
9 Mr. Hearing is misstating the testimony from yesterday.

10 JUDGE ROSAS: Well, the document is in evidence.

11 MS. LEONARD: I believe it's 2.85 that Mr. --

12 JUDGE ROSAS: The document is in evidence, speaks for
13 itself.

14 MS. LEONARD: Okay.

15 Q. BY MR. HEARING: And the -- I stand on the record,
16 the -- yesterday, you said \$1.76 for health insurance; you
17 remember that?

18 A. Yes, sir.

19 Q. And you said 99 cents for two pensions; you remember
20 that?

21 A. That's correct.

22 Q. Okay. Now, the last agreement that you believe was in
23 place was for \$2.85 to be taken out of -- or to be paid by
24 AMS for -- whether it was a union mason that they employed or
25 a non-union mason that they employed; is that right?

1 A. That's right.

2 Q. Okay. So that's where the 2.85 comes from; is that
3 right?

4 A. Yes, sir. That's correct.

5 Q. Okay. All right. And that 2.85 was referenced in
6 General Counsel Exhibit 7(j), if you can pull out that.

7 A. In our files or your files?

8 Q. It's -- it would be the materials sent out by the
9 Employer during the campaign.

10 MR. HEARING: May I help the witness?

11 Q. BY MR. HEARING: You'll know it when you see it. Okay,
12 there. Right there. All right, turn to 7(j), if you would.

13 A. Yes, sir.

14 Q. All right. So there's a reference to \$2.85 there; is
15 that correct?

16 A. That's correct.

17 Q. And so that was a correct statement for the Company to
18 say that it was paying the Union \$2.85 per employee, whether
19 mason or not, correct?

20 A. Whether they were mason or not?

21 Q. Yes. I'm sorry.

22 A. No, that's not correct.

23 Q. Union or not, yeah. Whether union or not; is that
24 right?

25 A. That's correct.

1 Q. Okay. Did Mario Morales ever terminate an employee, to
2 your knowledge?

3 A. There may have been -- me and Mario ran a job together,
4 where he did have the authority to let someone go. And he
5 may have on that project.

6 Q. You don't know?

7 A. I don't recall, you know, if there's a specific incident
8 or a person's name that I can testify now. But I think,
9 throughout the project, he may have terminated some folks.

10 Q. All right. So let me show you your June 16th, 2016
11 affidavit at paragraph 5. I'll let you read it to yourself
12 first. It's on page 2 and 3, starting at paragraph 5 through
13 the end of paragraph 5, if you'll let me know when you've
14 completed that.

15 A. Sure. Yes, sir.

16 Q. All right. You've read it?

17 A. I have.

18 Q. All right. So do you recall providing an affidavit,
19 sworn statement to the Board, indicating that you have
20 personal knowledge of Mario Morales, Sr., terminating an
21 employee from a job?

22 A. Yes, sir.

23 Q. You said that very affirmatively in this affidavit,
24 correct?

25 A. Yes, sir.

1 Q. And sitting here today, do you have personal knowledge
2 of Mr. Morales actually terminating an employee from a job?

3 MS. WALKER: Objection as to relevance. That
4 affidavit --

5 JUDGE ROSAS: Hold on. Don't elaborate. What's the
6 relevance?

7 MR. HEARING: The contention that -- I presume they're
8 trying to make an assertion that the superintendents could
9 terminate, in light of the testimony that's been heard so far
10 about when Mr. McNett discovered the two individuals at the
11 University of Tampa job, and then he took that up the chain.
12 So I presume that's why the assertion's been made by this
13 witness that superintendents had the authority to fire.

14 JUDGE ROSAS: Do you disagree with that representation
15 as to what your contention is?

16 MS. WALKER: No, Your Honor. We were not looking to
17 find that Mr. Morales had any kind of supervisory indicia.

18 JUDGE ROSAS: You're referring to supervisors in
19 general, right?

20 MR. HEARING: Yes, sir. And this --

21 JUDGE ROSAS: Okay. Overruled. He can answer.

22 Q. BY MR. HEARING: All right. So sitting here today, do
23 you have personal knowledge of Mr. Morales, Sr., actually
24 terminating an employee from a job?

25 A. Yes, I do.

1 Q. And who was that, that he terminated?

2 A. I can't recall. I can recall it was a black gentleman
3 that ran the mixer for us out on that project that had a
4 problem with attendance, coming in and out to the point where
5 he frustrated Mr. Morales enough that he let him go.

6 Q. Okay. So why is it that you can remember that now but
7 you couldn't remember that 5 minutes ago?

8 A. I didn't say I didn't remember 5 minutes ago.

9 Q. Okay. Well, the record will reflect what you said.

10 A. Okay.

11 Q. I'm not going to argue with you.

12 A. Sure.

13 Q. How about you, though? In this affidavit, you say that
14 you terminated employees; remember that?

15 A. I think it states that I had the ability to.

16 Q. You state, in paragraph 5, at the bottom of page 2, "I
17 also terminated employees when I occupied this position."
18 You remember affirmatively stating that to the Board?

19 A. Correct. And we spoke about that earlier, about the
20 gentleman from Universal Studios that I terminated.

21 Q. Okay. So a moment ago, why were you saying, I had the
22 ability to terminate, as opposed to agreeing that you had
23 actually terminated somebody? Can you explain your answer?

24 A. There would -- I did talk about the termination of the
25 employee at Universal Studios, and that also I had the

1 ability to do so.

2 Q. All right. But you also had to inform AMS management to
3 be able to follow through and have that actually be
4 effectuated, the termination, correct?

5 A. I could terminate the employee.

6 Q. Okay. And then that was subject to the approval by AMS
7 management, correct?

8 A. No.

9 Q. So you could terminate an employee for any reason, even
10 if it's a discriminatory reason or an illegal reason?

11 A. I could terminate them, and then I'm sure the office was
12 informed about it. And if they wanted to overturn the
13 decision, by all means, I'm sure they could have, but I had
14 the right to terminate them.

15 Q. All right. But you understood that you did not have the
16 right to terminate somebody because of the color of their
17 skin, correct?

18 A. That's correct.

19 Q. And you didn't have the right to terminate somebody
20 because they had a disability, correct?

21 A. That's correct.

22 Q. You didn't have the right to terminate somebody because
23 they had union status, correct?

24 A. Correct.

25 Q. All right. Now, you also testified about the

1 contribution, or whether union members contributed to union
2 salaries. You remember that testimony yesterday?

3 A. Yes, sir.

4 Q. And what did you testify to yesterday? What do you
5 recall saying?

6 A. That union salaries were -- the means of how union
7 salaries were gotten were through the checkoff dues.

8 Q. Okay. So the dues, it's correct to say that union dues
9 go, at least in part, they go to pay for union salaries?

10 A. That's correct.

11 Q. You've testified yesterday about that Exhibit 11, the
12 card, with -- you said that referrals were attached and they
13 were sent to AMS; you remember that testimony yesterday?

14 A. Yes, sir. I do.

15 Q. All right. And do you have any recollection of which
16 referrals were actually sent to AMS? Or is this just general
17 recollection that referrals were sent to AMS?

18 A. It's basic general recollection that they were faxed.
19 Some were e-mailed and scanned.

20 Q. But identifying by name would be impossible for you,
21 right?

22 A. Oh, there was well over a hundred referrals sent, so --

23 Q. You testified also that one of the ways that AMS found
24 out about union affiliation was through its application; you
25 remember that testimony?

1 A. Yes, sir.

2 Q. If you could pull out Respondent's Exhibit 40 in the
3 book in front of you, your application.

4 A. Yes, sir.

5 Q. Could you point to where you were asked about your union
6 affiliation in that application?

7 A. Where I was asked?

8 Q. Yes, sir.

9 A. No, sir. I don't see that.

10 Q. Okay. So why is it that you testified that one of the
11 ways that AMS finds out about affiliation is through asking a
12 question on an application, sir?

13 A. It is on the application, but it's under the heading for
14 official office use only. But it is on the application that
15 I've seen.

16 Q. Okay. And the one that you're looking at right now?

17 A. Yes, sir.

18 Q. Okay. And so is the employee actually asked on the
19 application, the part that the employee has to fill out?

20 A. No, sir.

21 Q. Okay. So thank you for clarifying that.

22 A. You're welcome.

23 Q. Now, who was it that you were thinking of when you
24 testified that you had found employees not wearing a safety
25 harness, and you gave them a verbal warning?

1 A. Oh, I don't, I don't recall specific names or incidents.
2 It happens all the times on jobsites, whether it's gloves,
3 glasses, harness, safety violations, dust mask.

4 Q. Sure. But I'm talking about safety harnesses, not
5 glasses or gloves, et cetera. I'm talking about safety
6 harness. Who was it that you observed, a mason above 6 feet
7 who was not railed off and not facing brick, that had open
8 exposure, was not wearing a harness or a tie-on?

9 A. I couldn't recall any names at this time.

10 Q. Okay. Did you look through the production that your
11 attorney asked for by subpoena in this case, or the personnel
12 files of AMS?

13 A. I'm not sure what you're asking.

14 Q. The personnel file that your attorney asked for the
15 Company to produce, personnel files of masons, did you look
16 through the documents that were produced?

17 A. No, sir. I did not.

18 Q. All right. Did you, at any time, find any documents
19 produced by AMS that indicate that a mason was given a
20 warning after having been observed by an AMS management
21 person, aloft above 6 feet, in a condition where they should
22 be wearing a harness and tied off?

23 MS. WALKER: Objection, Your Honor. It's compound,
24 confusing --

25 JUDGE ROSAS: Yeah.

1 MS. WALKER: -- and it --

2 JUDGE ROSAS: Try to break it down.

3 MR. HEARING: Sure.

4 JUDGE ROSAS: Yeah, and what else?

5 MS. WALKER: And also I believe he's -- it's asked and
6 answered. He said he did not look through the files.

7 JUDGE ROSAS: Well, let's break it down.

8 MR. HEARING: And I meant for it to be broader than just
9 the files.

10 Q. BY MR. HEARING: Have you seen any document that AMS
11 management has completed where a mason was not -- was
12 elevated, was not properly harnessed and tied off, and they
13 received less than termination for it?

14 A. During yesterday's testimony would be the first time
15 that I have seen that.

16 Q. Okay. So you're referring to what the contractor had
17 filled out for Carollo, Brian Carollo?

18 A. I think there was more than Mr. Carollo in yesterday's
19 testimony.

20 Q. It was a Mr. Haser, that there's a reference to it, an
21 exhibit. There's a second violation. But my question was
22 specific. It was about --

23 A. Okay.

24 Q. -- being observed by someone in ASM [sic] management,
25 the mason having been observed by someone in AMS

1 management --

2 MS. LEONARD: You're --

3 Q. BY MR. HEARING: -- aloft, over 6 feet.

4 MR. HEARING: Let me get the question out.

5 Q. BY MR. HEARING: Not properly harnessed or tethered?

6 JUDGE ROSAS: You have an objection?

7 MS. LEONARD: I have an objection --

8 JUDGE ROSAS: All right.

9 MS. LEONARD: -- Your Honor. The witness has already
10 testified that the first time he would have seen the document
11 was yesterday, and --

12 JUDGE ROSAS: Okay. Don't elaborate. Don't elaborate
13 because then we have to excuse the witness.

14 Let's do this. Why don't you lead him and establish a
15 predicate so you can get to the point that you're trying to
16 establish? Okay. Lead him with a bunch of smaller
17 questions, and then --

18 MR. HEARING: I'll just do some --

19 JUDGE ROSAS: -- because you're -- I understand the
20 scope of where you're trying to reach to.

21 MR. HEARING: Let me use the GC exhibit. Sir, if you
22 can --

23 JUDGE ROSAS: This kind of stuff kind of tends to get
24 long and compounded if you put it into a question.

25 Q. BY MR. HEARING: So let's look at the GC exhibits.

1 Let's see what you're referring to that you saw for the first
2 time yesterday, okay?

3 A. Sure.

4 Q. And then maybe that helps us. So if you can look
5 through the GC exhibits, and then pull out what you were just
6 referring to, that's what you saw for the first time
7 yesterday.

8 MR. HEARING: While he's looking, could we go off the
9 record to ask a question? I don't --

10 JUDGE ROSAS: Sure. Off the record.

11 (Off the record from 2:09 p.m. to 2:10 p.m.)

12 Q. BY MR. HEARING: All right, so let me ask that last
13 question again. Mr. Bontempo, did you find --

14 A. Yes, sir.

15 Q. -- the exhibit that you were referring to earlier? What
16 was your answer?

17 A. Yes. I found the one for Mr. Carollo.

18 Q. All right.

19 A. And here's the one on Mr. Richard Haser.

20 Q. All right. Any others?

21 A. Appears to be one from a Mr. Tim Bryant.

22 Q. Okay. And what exhibit number is that?

23 A. 4(c).

24 Q. All right. Exhibit 4(c) and Exhibit 8, GC Exhibit 8,
25 and then what was the one for Mr. Haser?

1 A. Mr. Haser was Exhibit 3.

2 Q. All right. Any others?

3 A. 4(a), (b), and (c) were Tim Bryant. I think the
4 question was in regards to safety, correct, not drug tests?

5 Q. Not drug tests.

6 A. That appears to be it.

7 Q. All right. So Mr. Haser is Number 3? Would you pull
8 that out in front of you?

9 A. Yes, sir.

10 Q. Do you have any information that you believe is contrary
11 to the statement, "Richard was observed working without using
12 fall protection by Sean Gentry of HP"? That's the one you're
13 holding in your hand.

14 A. Oh, yes, sir. I see that.

15 Q. Do you have any information to dispute that Richard was
16 observed without using fall protection by Sean Gentry of HP?

17 A. No, sir. I do not.

18 Q. All right. And do you have any information that Richard
19 -- any personal knowledge that Mr. Haser was observed
20 working, by AMS management, not tied off correctly above 6
21 feet?

22 A. No, sir. I do not.

23 Q. All right. Turning to Mr. Carollo --

24 A. Yes, sir.

25 Q. -- Number 8. That's the --

1 A. Yes, sir.

2 Q. -- third one. You got that?

3 A. Yeah, I got it.

4 Q. All right. And at the end of that document, you see
5 where there is two subcontractor notices from Hensel Phelps
6 to the subcontractor? They're the ones that are gray shaded.

7 A. I do.

8 Q. Do you have any information to offer to dispute the fact
9 that someone from Hensel Phelps observed Mr. Carollo working
10 in a situation above 6 feet, not properly tied off?

11 A. From AMS?

12 Q. Yeah.

13 A. Was the question -- no, sir.

14 Q. All right. Do you have any knowledge, specific personal
15 knowledge that someone from AMS actually personally observed
16 Mr. Carollo working above 6 feet, not properly tied off?

17 A. No, sir. I do not.

18 Q. On either incident, do you?

19 A. On either incident, that's correct, sir.

20 Q. All right. And then for Number 4, Mr. Bryant, 4(a)
21 through (c) -- do you have that in front of you?

22 A. I have (c). I don't know where I hid (a) and (b). I'm
23 ready for the questions, though.

24 Q. Do you need a paper clip?

25 A. No, I don't.

1 Q. All right. Do you have any personal knowledge --

2 A. You can proceed with the questions.

3 Q. Do you have any personal knowledge of the circumstances
4 that led to Mr. Bryant's termination?

5 A. No, sir. I do not.

6 Q. All right. All right, so let's go to the Charging Party
7 exhibits. Do you have those in the stack in front of you,
8 sir?

9 A. Yes, I do.

10 Q. All right. First let me ask, ask you some general
11 questions about the Excelsior list. The Union, after
12 receiving the Excelsior list and the amendments from AMS,
13 also sought to provide the Board information regarding the
14 addresses of individuals that the Union believed should be
15 provided a mail ballot; is that correct?

16 A. I think that is correct. Yes, sir.

17 Q. All right. And the Union, I presume, once the petition
18 was filed, began gathering some of its own information on
19 last known addresses for masons that might be eligible to
20 vote, correct?

21 A. That's correct.

22 Q. That's just prudent, isn't it?

23 A. Yes, sir.

24 Q. All right. And you were able to obtain some new
25 addresses for some of the masons that you believed should be

1 able or should receive a mail ballot, right?

2 A. Yes, sir. That's correct.

3 Q. All right. And the -- Exhibits 23 and 24, that are --

4 I'm sorry, 22 and 23, the ones that look like this?

5 A. Yes, sir.

6 Q. They're the -- I can't remember you what you called

7 them, but the --

8 A. They're the fringe benefit reporting forms.

9 Q. From your system, which is called BACWorks?

10 A. No, sir. That's not correct.

11 Q. Oh, that's right. This is what AMS prepared --

12 A. That's correct.

13 Q. -- and presented, right?

14 A. Yes, sir.

15 Q. All right. And do you -- why is it that you only have

16 December of '16 and January of '16 here? Were you provided

17 February of '16 for -- from Advanced Masonry Systems?

18 A. I was not.

19 Q. All right. When did the Company stop sending these?

20 A. They're sent to the general office, so I don't

21 necessarily get copies on every single month.

22 Q. All right. Do you know if they're still being sent?

23 A. Yes. I know that they are not being sent.

24 Q. Okay. So do you know when they stopped being sent?

25 A. The last one that was due or probably was sent, was in

1 reference to the month of April 2016. However, there were
2 late payments that were made, so when they were received, you
3 know, I can't testify to that.

4 Q. All right. So do you have any information, personal
5 knowledge that AMS intentionally provided incorrect addresses
6 for masons that had worked for AMS?

7 A. No, sir.

8 Q. Do you understand that AMS needed to produce the last
9 known addresses for masons that worked for them?

10 A. Say that again.

11 Q. Sure. Did you understand that AMS needed, in the
12 Excelsior list that you testified about, the multiple copies
13 of it, the amendments, that AMS needed to provide the last
14 known addresses of the masons that worked for it?

15 A. I didn't know that that verbiage was in there, sir.

16 Q. All right. Did you think that AMS had a duty to check
17 the addresses of the masons that it had on file that had
18 worked for it?

19 A. I would assume that they did.

20 Q. That they had an obligation to check to see if they were
21 updated or they were correct or current?

22 A. Sure.

23 Q. Okay. And for employees that had left the employment of
24 the Company, did you think that as well?

25 A. Well, sure. You'd have to send tax documents to these

1 folks at some point.

2 Q. Okay. To the last known address, the one that was
3 provided by the employee --

4 A. That's correct.

5 Q. -- while they worked for AMS, right?

6 A. Sure.

7 Q. Okay. And do you have any knowledge, personal knowledge
8 of AMS actually trying to track down and solicit to vote no
9 on the petition any former employee?

10 A. Any former employee that was solicited to vote no?

11 Q. That the Company tracked down and solicited to vote no.

12 MS. WALKER: Objection. This was not covered on direct
13 testimony.

14 JUDGE ROSAS: Covered authorization cards, process, will
15 identify the dues authorization card, petition filed. Some
16 basic facts regarding the petition filing date, the agreed
17 upon date for mailing, agreed upon date for counting the
18 ballots, discussion about the Excelsior list.

19 MR. HEARING: What I'm going to, what I think it goes
20 to, Your Honor, is when he testified that the union campaign
21 was harmed by not having the addresses. That was his
22 testimony.

23 JUDGE ROSAS: Which exhibit?

24 MR. HEARING: It's not an exhibit. It was elicited by
25 counsel, about the various --

1 JUDGE ROSAS: Of not having access?

2 MR. HEARING: Of not having access, of what --

3 JUDGE ROSAS: To the jobsite?

4 MR. HEARING: No, sir. This is about not having -- was
5 the union campaign harmed by not having the addresses of the
6 former masons. That question was asked of the witness. So
7 now I'm trying to find out -- and he said yes, it was. And
8 now I'm trying to find out if he contends that the Employer
9 tried to contact any of the people that he claims that he
10 didn't have access to.

11 MS. WALKER: I don't know how that's relevant to the
12 Union's objections.

13 JUDGE ROSAS: Do you recall that testimony, regarding
14 harm?

15 MS. WALKER: I do recall asking that question about how
16 the Union was harmed, because it's the Union's objection and
17 burden to prove that. I don't think that it's relevant
18 whether or not the Employer was harmed in tracking down
19 employees' addresses.

20 JUDGE ROSAS: No. The question is whether the Union was
21 harmed, if he knew about any instances in which the Employer
22 tried to reach out --

23 MR. HEARING: And thereby harming the Union somehow, is
24 what I'm trying to get at.

25 JUDGE ROSAS: I'll allow it, if you know.

1 THE WITNESS: I don't know.

2 MR. HEARING: Okay. I just wanted to -- I don't want to
3 be sandbagged, is all I'm trying to say, in terms of argument
4 later. So that's why I wanted to find out if you -- that's
5 what your testimony was.

6 Q. BY MR. HEARING: All right. So how was the Union harmed
7 by not having -- well, let me ask it this way. Do you know
8 of any individual that was not mailed a mail ballot because
9 the Company intentionally provided a false address?

10 A. I can't say intentionally. No, sir.

11 Q. All right. Now --

12 MS. LEONARD: Excuse me, Your Honor. Can we take a
13 5-minute restroom break?

14 JUDGE ROSAS: Sure. Off the record.

15 (Off the record from 2:23 p.m. to 2:30 p.m.)

16 JUDGE ROSAS: All right, back on the record.

17 (Respondent's Exhibit 58 marked for identification.)

18 Q. BY MR. HEARING: Let me show you what's marked for
19 identification purposes as Respondent's Exhibit Number 58.

20 MR. HEARING: A copy for each of you. A copy for Your
21 Honor.

22 JUDGE ROSAS: Thank you.

23 MR. HEARING: And I will get you a second copy.

24 MS. LEONARD: Thank you.

25 Q. BY MR. HEARING: This is a document that was produced to

1 us by your counsel, you and your counsel, I believe, this
2 morning. Do you recognize this document?

3 A. Yes, sir. I do.

4 Q. And this is something that you authored that you sent to
5 Mr. Smith?

6 A. That is correct.

7 Q. And it was subject, weekly report of April 18th through
8 April 23rd of 2016?

9 A. That is correct.

10 MR. HEARING: Move the introduction of Respondent's
11 Exhibit 58.

12 MS. LEONARD: No objection from the General Counsel.

13 MS. WALKER: No objection.

14 JUDGE ROSAS: Respondent's 58 is received.

15 **(Respondent's Exhibit 58 received in evidence.)**

16 Q. BY MR. HEARING: All right. And in this document, sir,
17 you state that you went to the University of Tampa AMS
18 project, there in the second paragraph; you see that?

19 A. Yes, sir.

20 Q. And that you talked to all masons. Does that mean eight
21 masons or is that -- what is that, "masons 8," what's that a
22 reference to?

23 A. I think to the amount of masons that were on the project
24 at the time, sir.

25 Q. Okay. And then laborers would be eight or nine?

1 A. Yes, sir. That's correct.

2 Q. And -- okay. Mr. McNett, Turbo, you refer to him there,
3 was present, right?

4 A. That's correct.

5 Q. Okay. And you say you, "Spent an hour and a half on the
6 site. And after they got off, we were able to get them to
7 sign our T-shirt, along with giving them the health insurance
8 info." You see that?

9 A. I do.

10 Q. What do you mean, "sign our T-shirt?" Would that be
11 sign an authorization card and receive a T-shirt?

12 A. No, sir.

13 Q. What does it mean?

14 A. We had a T-shirt, just to have the members sign.

15 Q. Just a single T-shirt, like this here that's at GC
16 Exhibit 12?

17 A. Yes, sir. That's correct.

18 Q. And you just had them sign it on the T-shirt?

19 A. Yes, sir.

20 Q. With a Sharpie?

21 A. Yes, sir.

22 Q. Or what? Okay. And what was the purpose of having them
23 do that?

24 A. The purpose was the -- to show the support behind the
25 union members, behind the Union.

1 Q. And you were able to get all eight of the masons to do
2 so?

3 A. I don't recall how many signed that shirt at that day,
4 sir.

5 Q. What's the reference to health insurance information?

6 A. Health insurance information to inform them what health
7 insurance they had or were able to achieve.

8 Q. So what does that mean? What did you tell them?

9 A. I think we gave them insurance about our -- information
10 about our health insurance, what was covered, who was
11 covered.

12 Q. Was that a handout?

13 A. It was.

14 Q. All right. And was it a single 8½ by 11 sheet?

15 A. It could have been.

16 Q. Turn to Respondent's Exhibit Number 12 in that book in
17 front of you, if you would, please. You recognize that
18 document, sir?

19 A. This may have been done by mail-out.

20 Q. Is this something that you prepared?

21 A. No, sir.

22 Q. Is it something that Local 8 prepared?

23 A. I can't testify to who prepared the document.

24 Q. Have you seen it before?

25 A. I don't think I have.

1 Q. So is it your testimony that you didn't post this
2 anywhere?

3 A. Oh, no. I absolutely did not post this anywhere.

4 Q. All right. Did you mail this to anybody?

5 A. It may have been mailed.

6 Q. Why do you say "may have?"

7 A. I don't have no evidence to say that it was or it
8 wasn't.

9 Q. Okay. But you believe that it was the practice of
10 Local 8 to send information to potential members or members
11 about what health insurance Local 8 could provide?

12 A. The practice?

13 Q. Yeah, the practice of Local 8 to do so, to inform
14 members or potential members of the health insurance that you
15 can provide?

16 MS. WALKER: Objection. If he wants to ask him if Local
17 8 does do that, but not the practice. I think that that's
18 not asking a fact.

19 JUDGE ROSAS: If he knows.

20 Do you know?

21 THE WITNESS: I don't know.

22 Q. BY MR. HEARING: Well, you know that on this day that
23 you report to Mr. Smith that you provided health information
24 to at least eight masons at AMS's UT job, correct?

25 A. That's correct.

1 Q. All right. And you had done that on other jobsites,
2 correct?

3 A. That's correct.

4 Q. And that would be multiple jobsites, correct?

5 A. That's correct.

6 Q. So that would be a practice of Local 8 to do, correct?

7 A. That's correct.

8 **(Respondent's Exhibit 13 marked for identification.)**

9 Q. BY MR. HEARING: All right. And turn to Exhibit Number
10 13, if you could.

11 A. Sure.

12 Q. Respondent's 13. Do you recognize this document?

13 A. Yes. I think I've seen this document.

14 Q. All right. Where have you seen it?

15 A. I think this possibly was one of the mail-outs that went
16 out to the members.

17 MR. HEARING: Move the introduction of Respondent's 13.

18 MS. WALKER: A little voir dire, please, of the witness.

19 **VOIR DIRE EXAMINATION**

20 Q. BY MS. WALKER: Mr. Bontempo, did you prepare this
21 document that is marked as Respondent's Exhibit 13?

22 A. No, ma'am. I did not.

23 Q. Are you aware who prepared the document?

24 A. I am not.

25 Q. Do you know that the document was mailed out by BAC

1 Local 8 or the International Union?

2 A. Yes.

3 MS. WALKER: No objection.

4 MS. LEONARD: No objection from the General Counsel,
5 Your Honor.

6 JUDGE ROSAS: Respondent's 13 is received.

7 **(Respondent's Exhibit 13 received in evidence.)**

8 **CROSS-EXAMINATION (cont.)**

9 Q. BY MR. HEARING: All right. And now that we've talked
10 about Number 13, does that refresh your recollection any
11 further about whether you can say that Respondent's Number 12
12 was mailed out to AMS employees?

13 A. No. I can't testify that I can sit here and say that
14 that was sent out or it wasn't.

15 Q. All right. So back to Respondent's Exhibit 58, that's
16 before you. You go on to say, in that sentence, "We're going
17 back next week to update some of their addresses and phone
18 numbers." I'll let you get it in front of you. It's the one
19 that's not in the book that's marked Respondent's 58 at the
20 bottom.

21 A. Yes, sir.

22 Q. You see that next sentence, the rest of that sentence,
23 where you say, "We're going back next week to update some of
24 their addresses and phone numbers"?

25 A. Yes, sir.

1 Q. So even Local 8 needed to update addresses and phone
2 numbers of AMS employees; is that correct?

3 A. It could have been possible. Yes, sir.

4 Q. And this was before the petition was filed, correct?

5 A. That is correct.

6 Q. All right. And then you go on to say, "The bricklayers
7 were very supportive, along with Turbo." That would mean
8 that Mr. McNett was being supportive of your efforts to talk
9 to the employees?

10 A. Yes, I would say that's what it indicates.

11 Q. And this would be an example of when you gave out
12 T-shirts and Gatorades, as you go on to say in that sentence,
13 right?

14 A. Yes, it does.

15 Q. And then it says, "More to follow on this site." What
16 does that mean?

17 A. Well, that there would be future visits.

18 Q. All right. And then the next paragraph, you reference
19 going to an AMS project in Sarasota, again with Marvin. That
20 would be Marvin Monge, correct?

21 A. That is correct.

22 Q. And you talked to Todd -- how do you pronounce his last
23 name again?

24 A. Wolosz.

25 Q. All right. And that's who you were referring to earlier

1 when I asked you about Todd Wolosz?

2 A. Yes, sir.

3 Q. All right. For the record, it's spelled W-o-l-s-z

4 [sic]. Is that correct?

5 A. To the best of my knowledge, yes.

6 Q. All right. That's how you wrote it here in this

7 document.

8 A. That is correct.

9 Q. Just wanted to -- all right, thank you. And it appears
10 that on that AMS project, you were allowed to give out

11 T-shirts and health insurance information; is that correct?

12 A. That's correct.

13 Q. And then the next paragraph references going to an AMS
14 project with Mr. Monge in St. Petersburg, where you talked to
15 eight bricklayers, six of them union. And "most laborers
16 were all given T-shirts along with signed our T-shirt." You
17 see that?

18 A. Yes, sir. I do.

19 Q. So that -- would that be the project where Mr. Canfield
20 was?

21 A. Yes, sir. It was.

22 Q. And where did you give them this, the T-shirts? Just in
23 the parking lot?

24 A. It was both. It was on the project and in the parking
25 lot.

1 Q. All right. By your earlier testimony, on the project
2 would have been during the break time, if it was on the
3 project, because of your respect not to go on there while the
4 men were working, right?

5 A. That's not what I said.

6 Q. Well, let me ask --

7 A. I said I made my best ability to do that.

8 Q. Okay.

9 A. And at all times, I could not say that I was on these
10 projects at break, lunch, or quitting time.

11 Q. All right. How about when you were -- wrote about
12 giving them T-shirts here at Mr. Canfield's project at St.
13 Petersburg? Do you recall whether during -- it was during
14 break time or not?

15 A. Yes, I do. I think it was either break or lunch time.

16 Q. All right. And then Mr. Canfield even told you that he
17 would sign up for the Union; is that correct?

18 A. Yes. Mr. Canfield expressed interest on several
19 occasions about joining the Union.

20 Q. So he was one of many AMS foremen that supported the
21 Union; is that correct?

22 A. To be totally accurate, he was fearful of his employer
23 to sign up with the Union for repercussions that he would no
24 longer be employed if he signed up with the Union.

25 MR. HEARING: Objection. Non-responsive. Move to

1 strike.

2 JUDGE ROSAS: The question called for a yes or no, so
3 the answer is stricken.

4 Q. BY MR. HEARING: So isn't it true, sir, that several of
5 the foremen for AMS were supportive of the Union?

6 A. Yes, sir.

7 Q. All right. All right, and that's it for Number 58.
8 The -- Mr. Acevedo, you testified about him, and you said
9 you've known him -- you knew him from the past; is that
10 correct?

11 A. I don't know what you're referring to as the past.

12 Q. Sure. Well, let me just ask you, did -- when did you
13 first meet Mr. Acevedo?

14 A. I can't honestly testify to when I met, first met
15 Mr. Luis Acevedo.

16 Q. Do you remember being asked a question about Mr. Acevedo
17 via e-mail from Mr. Alec Feliz around August of 2015?

18 A. Yes, sir. I do.

19 **(Respondent's Exhibit 56 marked for identification.)**

20 Q. BY MR. HEARING: All right. So turn to Respondent's
21 Exhibit Number 56 in that book in front of you, sir.

22 A. Sure.

23 Q. All right. You recognize that first page as being an
24 e-mail from you to Mr. Feliz, dated August 12, 2015?

25 A. I apologize. I don't see that on 56.

1 MS. LEONARD: We don't have 56 either.

2 MS. WALKER: We have just to 55.

3 MR. HEARING: Oh.

4 THE WITNESS: It is behind 56. And 56 --

5 MR. HEARING: May I approach, Your Honor.

6 THE WITNESS: I got it.

7 MR. HEARING: He's got it, but they don't.

8 THE WITNESS: Oh, I'm sorry.

9 MR. HEARING: So we've got a problem.

10 JUDGE ROSAS: There's a -- I have a 56.

11 MS. LEONARD: I have -- we don't.

12 MR. HEARING: You have it, but you don't?

13 MS. WALKER: Let me see if I have it.

14 MS. LEONARD: I don't. The General Counsel --

15 MR. HEARING: I apologize for that. We'll --

16 MS. WALKER: Oh, I have it, 56?

17 MS. LEONARD: Yeah, just --

18 MS. WALKER: Yes, I have it. We can share.

19 MS. LEONARD: We can share, but --

20 MR. HEARING: I'll get you a copy.

21 MS. LEONARD: Thanks.

22 MS. WALKER: We were just using hers.

23 MR. HEARING: Yeah. Here. Here's your copy right now.

24 MS. LEONARD: Thank you very much.

25 MR. HEARING: All right. So everybody on the same page?

1 Q. BY MR. HEARING: All right. That first page of R-56 for
2 identification purposes, is that an e-mail from you to
3 Mr. Feliz, dated August 12, 2015?

4 A. That is correct.

5 Q. And it's regarding Mr. Luis Acevedo?

6 A. That is correct.

7 MR. HEARING: Move the introduction of Respondent's
8 Exhibit 56.

9 MS. LEONARD: No objection from the General Counsel.

10 MS. WALKER: No objection from Petitioner.

11 JUDGE ROSAS: Respondent 56 is received.

12 **(Respondent's Exhibit 56 received in evidence.)**

13 Q. BY MR. HEARING: All right. So as of at least August of
14 2015, you knew who Mr. Acevedo was, correct?

15 A. That's correct.

16 Q. Now, having looked at this exhibit, Respondent's 56,
17 does that refresh your recollection as to when you first met
18 Mr. Acevedo?

19 A. It does not.

20 Q. All right. You did not work with Mr. Acevedo at AMS at
21 the same time that you worked at AMS, right?

22 A. That's correct.

23 Q. All right. And do you recall whether you spoke to
24 Mr. Feliz at or around the time that you all exchanged these
25 e-mails, in August of 2015, regarding Mr. Acevedo?

1 A. I'm sure we have, but I can't distinguish an exact
2 conversation.

3 Q. Do you remember being told that Mr. Acevedo had made a
4 reference that you had indicated to him that AMS was not
5 going to rehire him because of his prior injuries?

6 A. Yes, that he had made the statement.

7 Q. Right. I'm not saying that you admit saying that. In
8 fact, you expressly deny it in this cover e-mail?

9 A. Correct.

10 Q. All right. But what I'm trying to do is refresh your
11 recollection about --

12 A. Sure.

13 Q. -- a phone call with Mr. Feliz. Do you remember
14 Mr. Feliz speaking with you, or at least writing you, about
15 Mr. Acevedo making that assertion about you?

16 A. Yes, sir.

17 Q. And you deny that assertion, correct?

18 A. That is correct.

19 Q. In this e-mail, right?

20 A. That's correct.

21 Q. All right. So after this e-mail exchange in August of
22 2015, you did become aware that Mr. Acevedo was hired to work
23 for AMS in February of 2016, correct?

24 A. Yes, sir. That's correct.

25 Q. All right. Did you and Mr. Acevedo have a conversation

1 about what the subject of this e-mail, about whether AMS
2 was -- that you had ever said AMS wasn't going to hire him
3 because of his disability?

4 A. No. I don't think I discussed this e-mail with
5 Mr. Acevedo.

6 Q. All right. Now, you heard yesterday Mr. Stevenson talk
7 about a conversation in the morning where Mr. McNett made
8 some reference to the Union and wages. Remember that
9 testimony yesterday?

10 A. Yes, sir.

11 Q. Is that the first you had heard of that?

12 A. In particular, you can -- if you'd repeat that again.

13 Q. Sure. Mr. Stevenson sat here yesterday --

14 A. Yes, sir.

15 Q. -- and made some testimony about Mr. McNett making a
16 statement about the Union and wages. You remember that
17 testimony yesterday?

18 A. Yes, sir. I do.

19 Q. Is that the first time you had heard of that, that
20 Mr. Stevenson made that contention?

21 A. That Mr. Stevenson made the contention?

22 Q. Yes.

23 A. Yes. That would be the first time I heard that from
24 him. Yes, sir.

25 Q. Okay. Because if you had heard it previous, then you

1 would have -- I assume you would have made an assertion that
2 that was some sort of unfair labor practice; is that correct?

3 A. Yes. I didn't hear it prior from Mr. Stevenson.

4 Q. All right. And you didn't hear it from Mr. Acevedo that
5 he was present at that same conversation with Turbo and the
6 men that morning, that Mr. McNett had made some statement
7 about the Union and wages, correct?

8 MS. WALKER: Objection to the extent it calls for
9 hearsay.

10 JUDGE ROSAS: You know, it's -- it doesn't tend to prove
11 anything. It has reliability in the event that he does
12 mention that he did hear it, which would be adverse to the
13 questioner. So I tend to take that type of question.
14 Overruled.

15 You answered that?

16 THE WITNESS: No, I didn't answer it.

17 MR. HEARING: Could I have it -- oh, I guess we can't --

18 JUDGE ROSAS: She can't.

19 MR. HEARING: -- have it read back. So let me --

20 THE WITNESS: Please.

21 MR. HEARING: -- ask the question again. I mean --

22 JUDGE ROSAS: He never made the allegation to you,
23 Mr. Stevenson?

24 THE WITNESS: That is correct.

25 JUDGE ROSAS: That was the question?

1 THE WITNESS: No, we --

2 MR. HEARING: Well, no. It was --

3 JUDGE ROSAS: No?

4 MR. HEARING: -- Mr. Acevedo. Did Mr. Acevedo tell you
5 he heard Mr. McNett --

6 JUDGE ROSAS: Oh, right.

7 MR. HEARING: -- saying what Mr. Stevenson said?

8 JUDGE ROSAS: Right. Did Mr. Acevedo ever tell you
9 that?

10 THE WITNESS: Yes, he did.

11 Q. BY MR. HEARING: And when did he tell you that?

12 A. Probably not long after the incident occurred.

13 Q. Okay. And so you -- a couple of moments ago, you said
14 that you had heard this for the first time from
15 Mr. Stevenson, and it would have concerned you because you
16 might find that to be an unfair labor practice, you might
17 argue that it is, so --

18 A. You said that.

19 Q. Well, you agreed with me. You remember that?

20 A. Just to part, the first part. You added --

21 Q. Okay.

22 A. You added some to that.

23 Q. I'm not going to argue with you. So when you found out
24 about it, did you seek to amend or file on behalf of the
25 Union an unfair labor practice charge against the Company?

1 A. We did not.

2 Q. All right. And you've known -- as you said, you know
3 Mr. McNett to be very friendly with the Union, correct?

4 A. Yes.

5 Q. So you doubt that he actually said that; don't you, sir?

6 A. Oh, absolutely not.

7 Q. Oh, okay. So you're certain that he said it?

8 A. I'm not certain. I wasn't there to testify --

9 Q. All right.

10 A. -- that I heard that conversation, so I --

11 Q. Fair enough. All right. Let's see if I have anything
12 else.

13 **(Respondent's Exhibit 41 marked for identification.)**

14 Q. BY MR. HEARING: Turn to Exhibit Number 41, Respondent's
15 Exhibit 41, please.

16 A. Sure. Yes, sir.

17 Q. You recognize this document?

18 A. Yes, I do.

19 Q. Is this something that you prepared, since it references
20 Mike and your phone number?

21 A. Yes, sir.

22 MR. HEARING: All right. Move the introduction of
23 Respondent's Exhibit 41.

24 MS. WALKER: No objection from Petitioner.

25 MS. LEONARD: And no objection from the General Counsel.

1 JUDGE ROSAS: Respondent 41 is received.

2 **(Respondent's Exhibit 41 received in evidence.)**

3 Q. BY MR. HEARING: All right. And you sent this to AMS
4 masons, correct?

5 A. No. We sent it to all members of Local 8.

6 Q. All right, which would include some AMS masons; is that
7 correct?

8 A. It could possibly be, yes.

9 Q. All right. And there was -- you were soliciting the
10 masons that are members of Local 8 to go work on a masonry
11 contractor project in Tampa by offering a thousand dollar
12 bonus; is that right?

13 MS. WALKER: Objection, Your Honor. It calls for facts
14 not in evidence, that individuals who would receive this
15 document would be employed.

16 JUDGE ROSAS: All right, hold on.

17 MR. HEARING: That wasn't part of my question.

18 JUDGE ROSAS: Did you see this document go out?

19 THE WITNESS: Yes, Your Honor, I did.

20 JUDGE ROSAS: Okay. So you're offering it?

21 MR. HEARING: I think it -- I thought I -- yes, I did
22 move -- I'm sorry. Move the introduction of Respondent's --

23 JUDGE ROSAS: Oh, it's in. It's in evidence. It's in
24 evidence.

25 MR. HEARING: Yeah, I thought I did. Yes.

1 JUDGE ROSAS: It's in evidence. Okay. So now repeat
2 the question?

3 MR. HEARING: Sure.

4 Q. BY MR. HEARING: You were -- you sent this out to all
5 Local 8 masons, and you were seeking to encourage them to go
6 to work for a masonry contractor in Tampa by offering a
7 thousand dollar bonus after 30 days of employment, correct?

8 A. That is correct.

9 JUDGE ROSAS: And you objected to that?

10 MS. WALKER: I did. I think that that was a little
11 different question that was asked.

12 MR. HEARING: It wouldn't surprise me if I had a poorly
13 formed question, so -- but --

14 JUDGE ROSAS: Well, it doesn't say who's giving the
15 thousand dollars, right?

16 MS. WALKER: Right.

17 JUDGE ROSAS: Do you want to clarify that, in your
18 follow-up?

19 MR. HEARING: In follow-up, if I may. I didn't know if
20 there was an objection on the last question or not.

21 MS. WALKER: Are we looking at Respondent's Exhibit 42?

22 JUDGE ROSAS: Forty-one.

23 MS. WALKER: Oh. That would explain the confusion.

24 MR. HEARING: I'm going to get to 42.

25 MS. WALKER: Okay.

1 MR. HEARING: So may I inquire further?

2 MS. WALKER: Yes, please.

3 MR. HEARING: All right. I just want to make sure
4 they're ready.

5 MS. WALKER: Yes. I'm clear now. We were on the wrong
6 exhibit.

7 MR. HEARING: All right. Well, then do you need to make
8 an objection to 41? Because I moved it into evidence.

9 And I understood that you admitted 41.

10 JUDGE ROSAS: It's in evidence, yeah.

11 MS. WALKER: It's fine.

12 MR. HEARING: Okay.

13 JUDGE ROSAS: There was an objection to the question.

14 Q. BY MR. HEARING: All right, so with regard to this
15 assertion of a thousand dollar bonus after 30 days of
16 employment with the union masonry contractor in Tampa and
17 surrounding areas, that thousand dollars was to come from
18 where?

19 JUDGE ROSAS: If you know.

20 THE WITNESS: I don't know.

21 Q. BY MR. HEARING: Did you know that it was a real offer
22 of a thousand dollars, that they would actually get a
23 thousand dollars if they remained employed for 30 days?

24 A. Sure.

25 **(Respondent's Exhibit 42 marked for identification.)**

1 Q. BY MR. HEARING: Okay. All right. Turning to
2 Respondent's 42. Oh, and by the way, this -- 41, I forgot to
3 ask the question. This was sent in or sent out to Local 8
4 after the election regarding AMS, correct?

5 A. I can't testify to the actual date when it was sent out.

6 Q. All right. Turning to Respondent's Exhibit 42.

7 A. Yes, sir.

8 Q. Did you prepare this document?

9 A. (No audible response.)

10 Q. It has a reference to you at the bottom, phone -- your
11 phone number and your e-mail address, correct?

12 A. Yes, it does.

13 Q. So do you recognize this document?

14 A. Yes, sir. I do.

15 MR. HEARING: All right. And move the introduction of
16 Respondent's 42.

17 MS. LEONARD: No objection from the General Counsel.

18 MS. WALKER: No objection from Petitioner.

19 MR. HEARING: This --

20 JUDGE ROSAS: Respondent's 42 is received.

21 MR. HEARING: Thank you.

22 Q. BY MR. HEARING: This clearly was sent out after the
23 election in June, correct?

24 A. It appears that, yes.

25 Q. That's what it expressly says, right?

1 A. Yes, sir.

2 Q. It's an update since the election in June, right?

3 A. That is correct.

4 Q. And you sent this out to all Local 8 masons?

5 A. I can't testify to --

6 MS. WALKER: Objection as to relevancy. If it was sent
7 out after the election, I don't see how it's relevant to the
8 proceedings.

9 JUDGE ROSAS: Animus, lack of?

10 MR. HEARING: Exactly. It leads --

11 MS. WALKER: On the part of the Union? It's a union
12 document.

13 JUDGE ROSAS: Oh, I'm sorry. It's a union document. I
14 take that back. It's -- so it's after the fact. So what
15 would it tend to prove?

16 MR. HEARING: It says at the bottom that it's seeking
17 masons for referral to a union contractor that honors its
18 contractual obligations to pay for health insurance and
19 pension benefits. And it goes to the bias of this witness
20 and his credibility. Clearly he is exhibiting, by sending
21 this to AMS masons, exhibiting a desire to harm AMS because
22 it's not a union contractor.

23 MS. WALKER: Your Honor, I think the fact that he's a
24 union representative alone is going to make him adverse to
25 Advanced Masonry Services. I don't think this document tends

1 to further prove or disprove that.

2 MR. HEARING: Our contention is that it shows an intent
3 to harm AMS, which I believe is relevant to why this witness
4 is saying some of the things that he's saying.

5 MS. WALKER: That's a mighty big leap.

6 JUDGE ROSAS: You're referring to the upper portion of
7 the flyer? Or are you referring to the lower portion, the
8 bottom?

9 MR. HEARING: Well, I was actually referring to all of
10 it, but specifically, with the referral to the union
11 contractor that honors its contractual obligations to pay for
12 health insurance and pension benefits.

13 MS. WALKER: Your Honor, Advanced Masonry Service is not
14 even identified in this document.

15 JUDGE ROSAS: So let me understand the rationale here.
16 By soliciting to refer workers to other employers, is that
17 what you're saying this is seeking to do?

18 MR. HEARING: Yes, sir. And --

19 JUDGE ROSAS: You're drying up the potential workforce
20 for this employer?

21 MR. HEARING: That's correct, and --

22 JUDGE ROSAS: You're saying that's what that seeks to
23 do?

24 MR. HEARING: And I just want to point out, too, that
25 this references the -- it doesn't say AMS; that's a correct

1 statement by counsel. But it references the vote of a 16-16
2 tie with 22 challenged ballots, which is an express reference
3 to the very issue you have before you.

4 MS. WALKER: The Union maintains that documents sent
5 after the election --

6 MR. HEARING: And actually --

7 MS. WALKER: -- is completely irrelevant to the
8 proceedings before Your Honor.

9 JUDGE ROSAS: Documents after an election are relevant
10 if it's a bargaining order case.

11 MR. HEARING: And it does have AMS in there, counsel.

12 MS. WALKER: Oh, I'm sorry. I missed it.

13 MR. HEARING: In the second paragraph.

14 MS. WALKER: I stand corrected.

15 MR. HEARING: I know you didn't do that intentionally.

16 MS. WALKER: No, I didn't.

17 MR. HEARING: I'm just pointing that out.

18 JUDGE ROSAS: I'm, you know, generally generous in
19 allowing in, erring on the side of inclusion in the record
20 anything that might potentially matter. But this is after
21 the election. And I don't want to open up any doors to any
22 additional litigation, of paper, collateral litigation --

23 MR. HEARING: Just so you know, we're not contending
24 it's an unfair labor practice.

25 JUDGE ROSAS: -- I expect to happen after the election.

1 What?

2 MR. HEARING: We're not contending it's an unfair labor
3 practice. It's actually --

4 JUDGE ROSAS: No, no. Of course not.

5 MR. HEARING: No.

6 JUDGE ROSAS: But as far as, I mean, you know, the
7 notion that the witness is adverse to the Employer, I mean,
8 that's clear. They're in an adversarial position. This
9 witness is in an adversarial position with your client. I
10 mean, there's no disputing that. I'm just looking for any
11 additional rationale that you can give me that -- as to why I
12 should allow in this document and allow corollary or
13 anecdotal, you know, situations to be briefed and
14 litigated --

15 MR. HEARING: Well --

16 JUDGE ROSAS: -- that wouldn't really have much of a
17 bearing on what transpired prior to the election.

18 MR. HEARING: Correct. And I maybe have not been clear
19 about why I'm offering it. It's being offered to show that
20 this witness's bias is very strong and deep. And I think I'm
21 entitled to show a witness's bias at this proceeding, and
22 that's all it's an intent to do.

23 JUDGE ROSAS: I don't see that rationale carrying the
24 day. I'm going to sustain the objection. Respondent's 42 is
25 not received in evidence --

1 MR. HEARING: All right, so --

2 JUDGE ROSAS: -- at this time.

3 **(Respondent's Exhibit 42 rejected.)**

4 Q. BY MR. HEARING: Let me ask you, sir, why did you send
5 this out referencing specifically AMS?

6 A. It was an update on the election.

7 Q. Okay. But at the time, AMS was not a union contractor,
8 correct?

9 A. I guess that's to be determined.

10 Q. Well, sure. That's to be determined here, but you
11 understood that it was a tie at the time, and you were
12 specifically referencing AMS by sending this out to all Local
13 8 masons?

14 A. I don't know if it went out to all Local 8 masons.

15 Q. So did it just go out to AMS?

16 A. I can't testify to who it went out to.

17 Q. All right. And you were trying to solicit the people
18 that it went out to, to leave their current jobs and go to
19 the contractor that honors its contractual obligations to pay
20 for health insurance and pension benefits, correct?

21 MS. WALKER: Objection on the grounds of relevancy.

22 MR. HEARING: Okay.

23 MS. WALKER: What the Union did subsequent to the
24 representational proceeding to find the ULPs are not relevant
25 to these proceedings.

1 JUDGE ROSAS: All right. And your rationale is the same
2 as you indicated before, to show the strong bias of this
3 witness --

4 MR. HEARING: Yes, Your Honor.

5 JUDGE ROSAS: -- against your client. Again, counsel, I
6 would state, as I previously stated, that that adversarial
7 posture goes without saying. I'm going to sustain the
8 objection.

9 You know, if a certain action on the part of a union
10 official vis-à-vis a particular employer is so egregious,
11 then I suggest the client have esteemed counsel look to 8(b)
12 of the Act to see if there are any unfair labor practices
13 that might be brought against the Union.

14 But in this case, it's the converse that's relevant, and
15 that is, with respect to actions on the part of the Employer
16 before the petition, after the petition, after the election
17 that may have relevance with respect to an analysis of animus
18 vis-à-vis the alleged discriminatory actions taken by your
19 client.

20 But when it comes to the Union, as to again, you know,
21 credibility, credibility determinations are based on the
22 facts in the case, and the actions of this witness and the
23 Union, after the election has transpired, have very, very,
24 very little bearing on these ultimate issues, including a
25 determination about credibility.

1 Again, credibility has to be really pretty much
2 established, based on the actions of this witness and other
3 witnesses prior to the election, and at the time of -- at or
4 around the time of the alleged unfair labor practices that
5 are claimed. Okay. Next question.

6 MR. HEARING: Sure.

7 Q. BY MR. HEARING: Did you tell any lies to AMS, other
8 than the ones that we've talked about here today?

9 MS. WALKER: Objection, Your Honor, to the extent it's
10 prejudicial in nature and assuming facts not in evidence,
11 that lies have been told, multiple lies.

12 JUDGE ROSAS: All right. Well, you know, there's no
13 jury here, so there's really no such thing as prejudice, only
14 to the extent that it prejudices you in the posture of your
15 case and your proof and so on in terms of what you have to do
16 at this juncture.

17 But your question, again -- repeat the question.

18 MR. HEARING: That's all right.

19 Q. BY MR. HEARING: Let me ask this. In terms of you --

20 JUDGE ROSAS: In terms of any other lies?

21 MR. HEARING: Well, that's okay. I can let the record
22 reflect its --

23 JUDGE ROSAS: Okay.

24 MR. HEARING: -- what it reflects. Good.

25 Q. BY MR. HEARING: But what I want to know, sir, is, is

1 that you were, in your efforts to solicit individuals at AMS,
2 you -- did you treat the campaign to get cards for AMS any
3 differently than what you had treated other contractors?

4 A. No, sir.

5 Q. All right. And had you worked for other contractors
6 that you also sought to initiate a campaign against?

7 A. No, sir. I have not.

8 Q. All right. And the Karpes, Mr. Richard and Mr. Ron Karp,
9 they had, by your testimony, at least, for Mr. Ron Karp, been
10 nothing but decent with you; is that correct?

11 A. That is correct.

12 Q. All right. And yet, after you lost this election, you
13 sought to have masons leave the employment of AMS, to harm
14 them, correct?

15 A. That is not correct.

16 Q. All right.

17 A. My intention has never been to harm AMS.

18 MR. HEARING: Okay. That's all I have.

19 JUDGE ROSAS: Okay. Any redirect?

20 MS. LEONARD: There will be, Your Honor. We would
21 request at least 10 minutes to prepare --

22 JUDGE ROSAS: Okay.

23 MS. LEONARD: -- considering the length of the cross.

24 **JUDGE ROSAS: Off the record.**

25 **(Off the record from 3:05 p.m. to 3:19 p.m.)**

1 JUDGE ROSAS: Redirect?

2 **REDIRECT EXAMINATION**

3 Q. BY MS. LEONARD: Mr. Bontempo, I have a few questions
4 for you. First, if you could, direct your attention, please,
5 to General Counsel's Exhibits 11. That'll be your right-hand
6 stack there.

7 Is it not up there?

8 A. I'm sure it was. I know I've probably got these
9 all jumbled up.

10 JUDGE ROSAS: Here you go.

11 MS. LEONARD: Thank you, Your Honor.

12 THE WITNESS: Thank you, Your Honor.

13 Q. BY MS. LEONARD: Mr. Bontempo, you previously testified,
14 I believe yesterday, that General Counsel's Exhibit 11 is
15 something that you give out to employees at jobsites; is that
16 correct?

17 A. That's correct.

18 Q. Okay. And employees return those to the Union after
19 they fill them out, if they would like to, correct?

20 A. That's correct.

21 Q. Okay. And what does the Union do with them at that
22 point?

23 A. Well, they're placed in a file.

24 Q. Okay. If an employee signs the dues authorization
25 portion, what happens at that point?

1 A. Then the Employer is notified of their intent.

2 Q. Okay. Could you return to Respondent's Exhibit Number
3 39 in the binder?

4 JUDGE ROSAS: Can I have that back?

5 THE WITNESS: Certainly. Sorry, Your Honor.

6 Yes, ma'am.

7 Q. BY MS. LEONARD: Okay. Is this the document that you
8 testified you used to refer or to inform employers about the
9 dues authorization being signed by one of their employees?

10 A. Yes.

11 Q. Okay. So does the Union always send a work referral
12 form to an employer before an employee starts work for that
13 employer?

14 A. Not necessarily before. Could be the day of.

15 Q. Okay. Does it ever happen after that?

16 A. Yes, it does.

17 Q. Okay. Now, regarding the testimony you gave about how
18 you've heard that AMS began to pay bonuses to foremen, do you
19 recall that testimony?

20 A. Yes, ma'am.

21 Q. You testified that you never received that bonus,
22 correct?

23 A. That is correct.

24 Q. How many jobsites were you a foreman of where you had
25 the opportunity to receive that bonus?

1 A. Approximately two or three.

2 Q. Okay. You don't recall exactly when the bonus began to
3 be offered?

4 A. That's correct.

5 Q. Okay. But it was not offered from the beginning of your
6 time as a foreman, correct?

7 A. That is correct.

8 MR. HEARING: Object to the form. Leading.

9 MS. LEONARD: I'm just clarifying the earlier testimony.

10 MR. HEARING: Your Honor, the witness --

11 JUDGE ROSAS: I'll allow that.

12 Q. BY MS. LEONARD: Okay. Mr. --

13 MR. HEARING: Habit. I'm sorry.

14 JUDGE ROSAS: I'm sorry?

15 MR. HEARING: It's habit. I'm sorry.

16 JUDGE ROSAS: That's fine.

17 Q. BY MS. LEONARD: Mr. Bontempo, why --

18 A. Yes, ma'am.

19 Q. -- would you bring Gatorade to AMS jobsites?

20 A. For obvious reasons. It's hot in Florida, and, you
21 know, we like to treat our members fairly and give them
22 something to drink.

23 Q. Okay. And did you only give the Gatorade to members?

24 A. Absolutely not.

25 Q. Okay. How did AMS employees treat you when you brought

1 them Gatorade?

2 A. They were very thankful.

3 Q. Okay. And did you give the Gatorade to foremen?

4 A. Yes.

5 Q. And how were -- how would you describe the foremen's
6 attitude to you when you gave them Gatorade as well?

7 A. Very appreciative.

8 Q. Okay. And how did the AMS foremen's attitude to you
9 change after the petition was filed?

10 MR. HEARING: Object to the form. Lack of predicate.

11 JUDGE ROSAS: You're going to have to break it down at
12 this point, sites and times, locations.

13 MS. LEONARD: Okay.

14 Q. BY MS. LEONARD: Starting with the University of Tampa
15 job.

16 A. Yes, ma'am.

17 Q. The foremen there, I believe it's already in evidence
18 quite thoroughly that the foremen were Brent "Turbo" McNett
19 and --

20 A. That's correct.

21 Q. -- Mario Morales?

22 A. Mario was on that site at some point, yes.

23 Q. Okay. How did Mr. McNett's attitude to you change after
24 the petition was filed?

25 A. Drastically.

1 Q. And how would you -- how did you know that it had
2 drastically changed?

3 A. He expressed it verbally.

4 Q. What did he say?

5 A. He was very condescending about the Union.

6 Q. Okay. Do you remember some of his remarks specifically?

7 MR. HEARING: Object to -- this is outside of the scope.
8 I asked specifically about solicitation. I didn't ask about
9 attitude toward the Union vis-à-vis statements made by these
10 individuals. In fact, if I had, I'm certain I would have
11 elicited it then, that it was there.

12 JUDGE ROSAS: You did elicit testimony about the
13 goodwill that existed between this witness and those
14 individuals prior to the petition, or at some particular
15 point. So I'll overrule the objection. He can answer.

16 Q. BY MS. LEONARD: How did -- what -- do you recall any of
17 the specific remarks Mr. McNett said to you that led you to
18 know that he had drastically changed his attitude?

19 A. Yes. He insinuated that we were stealing money as far
20 as what was being reported to members, non-members, you know,
21 was disrespectful about the health care coverage that he now
22 had, the amount of pension credits, and time that he had
23 received.

24 Q. Okay. And how would you describe Mr. Morales's attitude
25 after the petition was filed?

1 A. I don't know if I had too much interaction with
2 Mr. Morales after the petition was filed.

3 Q. Okay. Fair enough. How would you describe Mr. Brian
4 Canfield's attitude to you after the petition was filed?

5 A. The same, very condescending.

6 Q. Do you remember any of Mr. Canfield's specific remarks?

7 A. Again, I think he had the same expressions, that the
8 Union was, in fact, stealing money.

9 Q. Okay. Could I direct your attention to Respondent's
10 Exhibit 58? That -- I think that's the e-mail right there on
11 top.

12 A. Yes, ma'am.

13 Q. Okay. Looking at the last sentence of the third full
14 paragraph --

15 A. Yes, ma'am.

16 Q. You said that, "Brian Canfield, the foreman who I've
17 been working on for some time, said if AMS remains on board,
18 he will sign up." Can you describe what you meant by that?

19 A. Yes. He expressed that he had recently got custody of a
20 child or several child -- children, I'm sorry, and that the
21 health insurance would be very beneficial to him.

22 Q. Okay. What did, specifically, "if AMS remains on board"
23 mean?

24 A. If they remained on as a union contractor.

25 MR. HEARING: Objection.

1 THE WITNESS: I'm sorry.

2 MR. HEARING: It calls for speculation as to what
3 Mr. Canfield said, if it's an exact quote. I'm not sure that
4 that's been established, and so lack of predicate, as well.

5 MS. LEONARD: This is Respondent's document, Your Honor,
6 and --

7 JUDGE ROSAS: Let me see that for a second.

8 THE WITNESS: Yes, sir.

9 JUDGE ROSAS: He testified that Canfield referred to
10 recent custody of a couple of children. So what was the
11 question following that?

12 MS. LEONARD: My question, specifically the phrase, "if
13 AMS remains on board" --

14 JUDGE ROSAS: All right.

15 MS. LEONARD: -- what did Mr. -- what was Mr. Bontempo
16 conveying by using that phrase.

17 MR. HEARING: Oh, I'm sorry. I assumed that it was an
18 assertion that Mr. Canfield said, if AMS remains on board,
19 and it was being asked what Mr. Canfield meant by that, which
20 would call for speculation.

21 MS. LEONARD: Oh. If he knows. If --

22 JUDGE ROSAS: Hold on.

23 MS. LEONARD: Or based on his conversation with Mr. --

24 JUDGE ROSAS: Hold on. And this is on which page?

25 MS. LEONARD: This is page 1 of --

1 JUDGE ROSAS: Page 1?

2 MS. LEONARD: -- R-58, the last sentence of the third
3 full paragraph.

4 JUDGE ROSAS: Okay. Repeat your question.

5 MS. LEONARD: Okay. I'll just withdraw and rephrase.

6 Q. BY MS. LEONARD: Did Mr. Canfield express any concerns
7 or reservations about supporting the Union?

8 A. Absolutely.

9 Q. What were those?

10 A. He was very concerned that if he signed up with the
11 Union, that his employer would be very unhappy and possibly,
12 you know, lose him his employment.

13 Q. Okay. And was Mr. Canfield a union member at that time?

14 A. He was not.

15 Q. Okay. Thank you very much.

16 So did you have any interactions with Mr. Coy Hale at
17 the yacht club jobsite after the petition was filed?

18 A. Yes, I did.

19 Q. Okay. And how did his attitude change after the
20 petition was filed?

21 A. Again, very condescending as towards the Union.

22 Q. Okay. And regarding the May 10th visit you made to the
23 Westshore Yacht Club jobsite that you testified about, how
24 long, in total, would you say you spent at the job that day?

25 A. My best guess would be less than 10 minutes.

1 Q. Okay. Did you have any conversations with Marc
2 Carney -- sorry, withdraw. Strike that.

3 I believe you testified that you had some conversations
4 with Mr. Carney after the petition was filed. Could you
5 describe how, if at all, his attitude changed from before the
6 petition was filed to after the petition was filed?

7 A. His attitude definitely changed. Again, he'd be
8 condescending towards the Union at some point after the
9 petition was filed.

10 Q. Okay. Do you remember any of Mr. Carney's specific
11 remarks about the Union?

12 A. They were all in, you know, on the realms of, you know,
13 the Union was stealing money and to that effect.

14 Q. Okay. For the record, does the Union steal money?

15 A. Absolutely not.

16 Q. Okay. And concerning this straw boss role at AMS --

17 A. Yes, ma'am.

18 Q. Is this an industry term?

19 A. Yes, it is.

20 Q. Okay. Does the straw boss at AMS always report to a
21 foreman, in your experience?

22 A. Yes, ma'am. He does.

23 MS. LEONARD: Okay. I have nothing further, Your Honor.

24 JUDGE ROSAS: Charging Party?

25 MS. WALKER: Yes, Your Honor.

1

REDIRECT EXAMINATION

2

Q. BY MS. WALKER: Mr. Bontempo, on cross-examination, I believe you gave testimony to the effect that you had been convicted of a felony; do you recall that testimony?

5

A. Yes, I do.

6

Q. And when was that conviction?

7

A. Approximately 1995.

8

Q. And what was the charge that that conviction was based on?

10

A. Possession with intent to deliver marijuana.

11

Q. And was there a reason why you did not disclose that on your application to AMS?

12

13

A. Yes. I felt that it was well over 20 years old and irrelevant. You know, as far as I was concerned, the statute of limitations was anywhere between 7 and 10 years. I felt it was optional to disclose, in my opinion.

16

17

MS. WALKER: Your Honor, if I may approach. I have an exhibit that I wasn't expecting to use.

18

19

(Charging Party's Exhibit 26 marked for identification.)

20

Q. BY MS. WALKER: Mr. Bontempo, I've just handed you a document that I'll represent to you was produced to me by AMS in response to a subpoena from the Petitioner. It is marked now as CP-26, Bates stamp Union 000180. Do you know what this document is?

24

25

A. Yes. It's the result of a drug test.

1 Q. Okay. And whose drug test?

2 A. AMS.

3 Q. And was this the drug test that you took in conjunction
4 with that application that was introduced in Respondent's --

5 A. Yes, ma'am.

6 Q. -- cross-examination?

7 A. Yes.

8 Q. That would have been R-40?

9 A. Yes, ma'am.

10 Q. And what were the results of this drug test?

11 A. They were negative.

12 MS. WALKER: I'd like to move to introduce Charging
13 Party's 26 into evidence.

14 MR. HEARING: No objection.

15 **JUDGE ROSAS: Off the record.**

16 **(Off the record from 3:33 p.m. to 3:34 p.m.)**

17 JUDGE ROSAS: Okay. Go ahead.

18 MS. WALKER: Thank you.

19 Q. BY MS. WALKER: Mr. Bontempo, do you have any OSHA
20 certifications?

21 A. I do.

22 Q. And when did you get your first OSHA certification?

23 A. I don't have the exact date, to be honest with you.

24 Q. Okay. Do you remember what your first OSHA
25 certification was?

1 A. Yes, an OSHA 10.

2 Q. Did you have your OSHA 10 when you worked for AMS back
3 in 2000?

4 A. I don't think so.

5 Q. Did you have your OSHA 10 when you worked for AMS as a
6 superintendent, before the Union?

7 A. Yes, ma'am.

8 Q. Okay. Did you have any other OSHA certifications during
9 that time that you were employed by Advanced Masonry Systems?

10 A. No, ma'am.

11 Q. Okay. Do you have any current OSHA certifications?

12 A. Yes, I do.

13 Q. And what is that certification?

14 A. I hold the OSHA 501 and the OSHA 500.

15 Q. Okay. And when did you receive those certifications?

16 A. I want to say early 2014, possibly late 2013.

17 Q. On cross-examination, I believe you were asked questions
18 regarding union officer positions held by Marc Carney. Do
19 you recall that testimony?

20 A. Yes, I do.

21 Q. Do you recall when Mr. Carney was a sergeant-at-arms for
22 the Union?

23 A. Not the exact dates.

24 Q. Has Mr. Carney been a sergeant-at-arm or other union
25 officer in the last 2 years?

1 A. I would have to look at the dates when he was a trustee
2 on the JATC fund. I don't think it was in the last 2 years.

3 Q. What is a sergeant of arms within the Local?

4 A. That is someone who just keeps order at a union meeting.

5 Q. And would that be a complete local union meeting of
6 Local 8, or would that be a chapter meeting?

7 A. That was a chapter meeting just for Orlando chapter.

8 Q. Okay. And you received several questions on cross-
9 examination regarding an affidavit, a union -- an affidavit
10 that was given to the Board, dated June 16th, 2016?

11 A. Yes, ma'am.

12 Q. Okay. Let me see if I can find it.

13 MS. WALKER: Your Honor, can we go off the record to
14 locate the --

15 JUDGE ROSAS: Sure.

16 MS. WALKER: -- updated, please?

17 **(Off the record from 3:37 p.m. to 3:38 p.m.)**

18 Q. BY MS. WALKER: Specifically, Mr. Bontempo, you were
19 asked about paragraph 9 of the affidavit and some, a
20 conversation that you had or information that you had related
21 to bonuses that were paid on AMS jobs. Do you recall that
22 information?

23 A. Yes, ma'am.

24 Q. Or that testimony?

25 A. Yes, I do.

1 Q. Okay. And you were asked question about whether or not
2 you made clear in the affidavit that you had heard that
3 information from Mr. Marc Carney. Do you recall that line of
4 questioning?

5 A. Yes, ma'am.

6 MS. WALKER: And if I could approach the witness.

7 JUDGE ROSAS: Show counsel what you're going to be
8 referring to.

9 MS. WALKER: That last sentence.

10 JUDGE ROSAS: Okay.

11 MS. WALKER: Okay.

12 Q. BY MS. WALKER: And if you look at the last sentence of
13 paragraph 9, does that sentence in that affidavit make clear
14 that you were referring to information that you heard from
15 Marc Carney in that testimony in the affidavit?

16 A. Yes, it does.

17 Q. Okay.

18 JUDGE ROSAS: Let's have that read for the record, if
19 it's contextual, to the --

20 MS. WALKER: Please read that last sentence.

21 JUDGE ROSAS: -- portion that was put in by counsel for
22 Respondent. Was that actually read into the record?

23 MR. HEARING: The entire paragraph was read.

24 JUDGE ROSAS: Okay. So let's do that as well.

25 THE WITNESS: The whole paragraph now?

1 JUDGE ROSAS: Read the section that counsel just
2 referred you to.

3 THE WITNESS: "Bonuses were paid on the last job I
4 managed."

5 JUDGE ROSAS: No, no, no, no, no, no.

6 MS. WALKER: No, no. The last sentence of that
7 paragraph.

8 JUDGE ROSAS: Read the last sentence.

9 MS. WALKER: "Marc Carney told me that the
10 superintendent/foreman received bonuses for that job."

11 Q. BY MS. WALKER: Okay. And you were asked several
12 questions, and then referred to both the affidavit that was
13 provided by the Union to the Region as well as an affidavit
14 that you gave to a field representative of the Region. Do
15 you recall the testimony about those two affidavits?

16 A. Yes, ma'am.

17 Q. Okay. And were both of those affidavits given
18 approximately a month after the events occurred that you
19 testified about in those affidavits?

20 A. Yes, ma'am.

21 Q. You were also asked some questions about your job visits
22 to the University of Tampa job. Do you recall that
23 testimony?

24 A. Yes, ma'am.

25 Q. And do you know if the general contractor on the

1 University of Tampa job changed at all during the course of
2 that project?

3 A. I do not.

4 Q. Do you not know whether it did or not, or do you not
5 know -- or do you not -- or did it change?

6 A. I do not know if it changed.

7 Q. Okay. Other than the testimony that you've given
8 regarding requests by AMS employees for you not to come on
9 jobsites at times after the petition was filed, was there
10 ever any other time that you were asked to leave the jobsite
11 by an AMS employee on the grounds that you were trespassing?

12 A. No, ma'am.

13 Q. Did an AMS employee ever contact law enforcement to have
14 you removed for trespassing on a jobsite?

15 A. No, ma'am.

16 Q. I believe you gave some testimony on cross-examination
17 where you were asked if you collected any authorization cards
18 after the petition was filed, on jobsites. Do you recall
19 that line of questioning?

20 A. I do.

21 Q. And just to be clear, did you collect any authorization
22 cards on jobsites after you were asked to leave the jobsites
23 by AMS employees?

24 A. After the petition filed or after I was asked to leave?

25 Q. After you were asked to leave.

1 A. No, I did not.

2 Q. On cross-examination, you were asked questions regarding
3 CP-22 and CP-23, regarding why -- whether you had additional
4 reports for other months like these exhibits; do you recall
5 that questioning?

6 A. Yes, ma'am. I do.

7 Q. And for any of the reports that the Union would have,
8 like CP-22 and 23, who would have given the Union those
9 reports?

10 A. Who would have given the Union the reports?

11 Q. Yes.

12 A. The Employer.

13 Q. So to the extent the Employer would have given the
14 reports, would the Employer have copy of -- copies of those
15 reports?

16 A. Yes, ma'am.

17 MS. WALKER: That's all I have, Your Honor.

18 JUDGE ROSAS: Any recross?

19 MR. HEARING: Yes.

20 **RECROSS-EXAMINATION**

21 Q. BY MR. HEARING: Working backwards, Mr. Bontempo, you
22 were able to obtain cards after the petition was filed but
23 before you were told, in the instances that you've related
24 to, that you had to leave the premises, correct?

25 A. Did I get cards after the petition was filed?

1 Q. But before you were told, in the instances that you've
2 testified to, that you need to leave the premises when you
3 showed up, correct?

4 A. I don't recall after the petition was filed -- is
5 just --

6 Q. All right, so --

7 A. -- is my thought there.

8 Q. That's fine. If you don't recall, you don't recall.
9 But you still were able to obtain a sufficient showing of
10 interest, of course, correct?

11 A. Yes, sir.

12 Q. All right. And you testified that you hadn't been
13 requested to leave a jobsite, I think, by AMS or a general
14 contractor. Just moments ago, you were asked about that; you
15 remember that?

16 MS. WALKER: Objection to the extent it mischaracterizes
17 the testimony. The questioning was about --

18 JUDGE ROSAS: Rephrase. Rephrase.

19 MR. HEARING: Sure.

20 Q. BY MR. HEARING: Let me just ask this. Do you recall
21 being asked to leave a Hensel Phelps contract site --

22 A. I have --

23 Q. -- in 2015?

24 A. Absolutely do.

25 Q. All right. And that was well before the petition was

1 filed, correct?

2 MS. WALKER: Objection. The questions that were asked
3 were about whether AMS employees asked him to leave a
4 jobsite, not whether a general contractor asked him. The
5 general contractor --

6 JUDGE ROSAS: Yeah, all right. Hold on. What's the
7 relevance in comparing?

8 MR. HEARING: Because -- and I'll be happy to tie it up,
9 but AMS certainly could have asked a general contractor or
10 alerted the general contractor to have him removed if he was
11 on the premises at a time when he wasn't allowed to be there.
12 So I'd be happy to tie it up.

13 MS. WALKER: Exceeds the scope of redirect.

14 JUDGE ROSAS: I'll allow it. It's sufficiently related.
15 You can answer, if you recall.

16 Q. BY MR. HEARING: You probably don't recall.

17 A. Please repeat the question.

18 Q. Sure.

19 A. I apologize.

20 Q. The question was, this being escorted off Hensel Phelps
21 property in 2015 was well before the petition was filed?

22 A. Yes, sir. That's correct.

23 Q. All right. And then the circumstances of that, of being
24 escorted off by Hensel Phelps in 2015, was AMS involved in
25 that at all?

1 A. Yes, to a degree.

2 Q. All right. Explain.

3 A. They have a foreman that works for them by the name of
4 Bob Dutton who has vehemently expressed his opposition to the
5 Union. When Hensel Phelps asked him if I was welcome on the
6 jobsite, his reply was no, you know, he doesn't care for the
7 Union per se.

8 Q. Okay. And this when you believed that you had an
9 agreement with AMS that was still in place, correct?

10 A. That's correct.

11 Q. AMS didn't dispute whether it was still in place, right?
12 Yet you didn't file an unfair labor practice charge over
13 being escorted off by Hensel Phelps, did you?

14 A. No, sir. There was -- the only thing in question that
15 day was if I --

16 Q. No. It's just a yes or no. Did you file an unfair
17 labor practice?

18 A. No, sir.

19 Q. All right. Okay. And then with regard to the questions
20 about the felony conviction, if you turn to Respondent's
21 Exhibit 40 and then the actual question that was asked about
22 that. I think His Honor has a clear understanding based upon
23 prior statements about the purpose of this questioning, but I
24 want to point out to you, sir, that -- you see there that you
25 were asked, have you ever been convicted of a felony?

1 Respondent's 40, page 2.

2 A. Yes, sir.

3 Q. All right. Have you ever been convicted of a felony is
4 the question that was asked, right? Not within the last 7 to
5 10 years, correct?

6 A. That's correct.

7 Q. And did you see where it says under that, "Conviction
8 will not necessarily disqualify applicant from employment?"

9 A. Yes, sir.

10 Q. All right. You chose not to provide that answer
11 correctly because you believed that you wouldn't get hired,
12 correct?

13 A. No, sir. I felt it was irrelevant.

14 Q. You thought that a conviction for possession with intent
15 to traffic 33 pounds of marijuana was irrelevant?

16 MS. WALKER: Objection. Mischaracterizes testimony and
17 facts not in evidence.

18 JUDGE ROSAS: Evidence it mischaracterized what?

19 MS. WALKER: Mischaracterizes the facts in evidence of
20 the testimony. There was no trafficking testimony provided.

21 JUDGE ROSAS: We're getting a little too far tangential.
22 He lied on his application about whether having had a
23 previous felony conviction. All right. What's the next
24 question?

25 MR. HEARING: Sure.

1 Q. BY MR. HEARING: The personal beef that you said that --
2 I'm sorry, the attitude and condescending statements by
3 Mr. Carney were about, you said about the Union stealing
4 money. Was this contention by him that the Union was
5 stealing his money?

6 A. Yes.

7 Q. Okay. So he had a specific grievance against the Union
8 about how he was being treated by the Union?

9 A. Specific grievance as in?

10 Q. As in what he was telling you. He was relating that he
11 had a problem with how the Union was treating him; is that
12 correct?

13 A. It was an overall observation that he felt the Union was
14 taking members' contribution funds and not crediting them
15 appropriately to where they should have been appropriated.

16 Q. All right. And did Mr. McNett similarly, when he
17 said -- oh, I'm sorry. It was Mr. Canfield that you said
18 was -- no, you said Mr. McNett too. Both of them indicated
19 or intimated that the Union was stealing money. Was it
20 similar complaints to Mr. Carney's?

21 A. Yes, sir.

22 Q. All right. And do you remember making a statement in
23 your affidavit about Mr. Carney -- and this is in the
24 affidavit to the Board Agent Aybar on June 15th, 2016, at
25 page 8 at the bottom, lines 24 through 27. Do you remember

1 attributing that to Mr. Carney, that he had to talk the way
2 he did in front of you to show the employees he was
3 supporting the Company, but he was really in favor of the
4 Union?

5 A. Yes, I do.

6 Q. All right. So you gave sworn testimony to the Board on
7 June -- I can't ever remember the dates of these two, June
8 15th, 2016, that Mr. Carney was "really in favor of the
9 Union," quotations, in quotations in that affidavit, correct?

10 A. Yes, that's correct.

11 Q. But here today, you're saying that Mr. Carney was not in
12 favor of the Union; is that correct?

13 MS. WALKER: Objection. It mischaracterizes testimony.
14 That's not the question that he was asked in which he said --

15 MR. HEARING: Well --

16 MS. WALKER: -- Mr. Carney didn't --

17 JUDGE ROSAS: Counsel's entitled to ask the question the
18 way he wants to ask it. I understand what your objection is.
19 You can follow up and ask it the way you want on re-redirect.
20 You can answer, if you know.

21 THE WITNESS: Please say it one more time.

22 Q. BY MR. HEARING: Sure. Are you asserting here today
23 that Mr. Carney was not in favor of the Union?

24 A. At some point, yes, sir.

25 Q. All right. But in this affidavit, you told the Board

1 agent that Mr. Carney made statements in front of Turbo and
2 the employees to show that he was supporting the Company, but
3 he was actually, quotations, "really was in favor of the
4 Union," in quotations. That's what you told the Board,
5 correct?

6 A. That is correct.

7 Q. You stand by that testimony?

8 A. I do.

9 Q. All right. You didn't tell the Board in that affidavit
10 that Mr. Carney thought that AMS would be unhappy and
11 possibly fire him if he didn't say what he said, did you?

12 A. No, because you said Mr. Carney, and in fact of the
13 matter, it's Mr. Canfield.

14 Q. I'm sorry, Mr. Canfield. That's correct. You didn't --

15 A. Everybody makes mistakes. That's correct.

16 Q. I've made a few, I'm sure.

17 A. Yes.

18 Q. But you didn't tell the Board that Mr. Canfield
19 indicated that AMS would have been unhappy and he'd possibly
20 lose his employment if he said positive things about the
21 Union, did you?

22 A. No, sir.

23 Q. Okay. In either of your affidavits to the Board, right?

24 A. That is correct.

25 Q. The authorization cards that you testified that you

1 obtained on site prior to the petition --

2 A. Yes, sir.

3 Q. That was your testimony?

4 A. Yes, sir.

5 Q. Did you do that out in the workplace?

6 A. That's correct.

7 MR. HEARING: All right. That's all I have.

8 JUDGE ROSAS: GC, anything?

9 **FURTHER REDIRECT EXAMINATION**

10 Q. BY MS. LEONARD: Mr. Bontempo, just very quickly, one
11 question: The Respondent asked you about an instance where
12 you were removed from a work site by Hensel Phelps in 2015?

13 A. Yes, ma'am.

14 Q. Okay. First off, what jobsite was that?

15 A. Bethune-Cookman College in Daytona Beach.

16 Q. Okay. And Respondent asked you whether you had filed an
17 unfair labor practice over that removal?

18 A. That's correct.

19 Q. Okay. Why did you not file an unfair labor practice?

20 A. The situation was very easily rectified. Their concern
21 was that I didn't go through their safety orientation.
22 Consequently, I did go through their safety orientation and
23 was permitted on the projects.

24 Q. And who were you saying when you referred to "they" in
25 that answer?

1 A. Hensel Phelps.

2 Q. All right. Thank you.

3 A. You're welcome.

4 JUDGE ROSAS: Charging Party, anything?

5 MS. WALKER: No, Your Honor.

6 JUDGE ROSAS: Okay. Do you have any follow-up on that
7 question that was asked by the GC?

8 **FURTHER RECROSS-EXAMINATION**

9 Q. BY MR. HEARING: That was a legitimate basis for Hensel
10 Phelps to have you undergo their safety orientation, correct?

11 A. That's correct.

12 MR. HEARING: All right. That's all.

13 JUDGE ROSAS: All right. I think we're done, sir. Do
14 not discuss your testimony with anyone until you're advised
15 otherwise by counsel, okay?

16 THE WITNESS: Okay. Thank you, Your Honor.

17 **(Witness excused.)**

18 JUDGE ROSAS: All right. Ready for your next witness?

19 MS. LEONARD: I am, after a short break, Your Honor.

20 **JUDGE ROSAS: Okay. Let's take 5.**

21 **(Off the record from 3:55 p.m. to 4:05 p.m.)**

22 **JUDGE ROSAS: On the record.**

23 MS. LEONARD: Counsel for the General Counsel calls
24 Mr. Luis Acevedo.

25 JUDGE ROSAS: Sir, come on up here. Please raise your

1 right hand.

2 (Whereupon,

3 **LUIS A. ACEVEDO**

4 was called as a witness by and on behalf of the General
5 Counsel and, after being first duly sworn, was examined and
6 testified as follows:)

7 JUDGE ROSAS: All right. Please have a seat. State and
8 spell your name.

9 THE WITNESS: Luis Alberto Acevedo Bayon (ph.).

10 JUDGE ROSAS: All right. Please spell it.

11 THE WITNESS: L-u-i-s, and my middle name is Alberto,
12 A-l-b-e-r-t-o, last name, A-c-e-v-e-d-o.

13 JUDGE ROSAS: Okay. And your address?

14 THE WITNESS: 13448 Beechberry Drive, Riverview,
15 Florida.

16 JUDGE ROSAS: Okay.

17 THE WITNESS: 335978.

18 JUDGE ROSAS: Okay.

19 **DIRECT EXAMINATION**

20 Q. BY MS. LEONARD: Okay. Mr. Acevedo, what is your
21 profession?

22 A. Bricklayer.

23 Q. Okay. How long have you been a bricklayer?

24 A. Many years, like 16 years.

25 Q. Okay. Are you a member of any unions?

1 A. Yes.

2 Q. What union are you a member of?

3 A. I was a member of the Bricklayers Union in Local 611 in
4 Connecticut.

5 Q. Okay.

6 A. And then I went to Mason Union Local 1. And then I
7 switch my work over here in Florida, local -- Florida,
8 Local 1.

9 Q. Of the Bricklayers as well?

10 A. Yes.

11 Q. Okay. When was the first time that you joined Local 8
12 in Florida?

13 A. Was in 2013.

14 Q. Okay. How do you find work as a mason?

15 A. As a mason, calling the BA, going to the hall.

16 Q. Okay. Have you ever performed any work for Advanced
17 Masonry Systems?

18 A. Yes.

19 Q. Did you work for them at all in the year 2016?

20 A. Yes.

21 Q. When was your first day of work for AMS in 2016?

22 A. June 25.

23 Q. I'm sorry, what month?

24 A. June. I mean, January.

25 Q. Okay.

1 A. Sorry.

2 Q. January 25th?

3 A. Yes.

4 Q. 2016, okay. And what was your last day of work for AMS
5 in 2016?

6 A. May 16th, 2016.

7 Q. Okay. What were your regular hours of work while you
8 worked for AMS?

9 A. 7 to 3:30.

10 Q. Okay. And how many days per week?

11 A. Five day per week.

12 Q. Okay. Which days?

13 A. Monday through Friday.

14 Q. Okay. Did you ever work overtime?

15 A. Yes.

16 Q. Okay. Did you ever have any breaks throughout the day?

17 A. Yeah, on coffee time, at 9:30 or 9, and lunch time at 12
18 noon.

19 Q. Okay. How long was the coffee break?

20 A. Ten minutes.

21 Q. And how long was the lunch break?

22 A. Half hour.

23 Q. Okay. And when you worked for AMS, which jobsite or
24 jobsites did you work at?

25 A. I work in yacht club in Westshore. And then they

1 transfer me to UT, University of Tampa.

2 Q. Okay. Who was your immediate supervisor at the yacht
3 club?

4 A. Coy Hale, Hale, Hale.

5 Q. Okay. And what were you building at the yacht club
6 jobsite?

7 A. Apartments.

8 Q. Okay. Do you know how many buildings there were?

9 A. There was, been like six, six, five buildings.

10 Q. Do you know how tall the buildings were?

11 A. Four stories, four, five different -- they were
12 different size, different.

13 Q. Okay. Who was your immediate supervisor at the
14 University of Tampa jobsite?

15 A. McNett.

16 Q. Okay. Did you know him by another name at the jobsite?

17 A. They got a nickname. Everybody calls Turbo.

18 Q. Okay. And were there any other supervisors while you
19 worked at the University of Tampa jobsite?

20 A. Mario Morales.

21 Q. Okay. What were you building at the University of
22 Tampa?

23 A. A sport complex.

24 Q. Okay. And how tall was that building?

25 A. It's -- the building is high. But it's two stories, but

1 it's high.

2 Q. Okay.

3 A. Each floor is like maybe 25 feet.

4 Q. Okay.

5 A. Forty feet.

6 Q. So how tall would you estimate overall the building is?

7 A. Seventy-five feet.

8 Q. Okay. What work, specifically, did you do when you
9 began working at the University of Tampa?

10 A. Laying bricks.

11 Q. Okay. Where were you laying bricks?

12 A. Outside.

13 Q. Okay. Were you constructing the exterior walls?

14 A. Yes.

15 Q. Okay. And about when did you transfer from the yacht
16 club to the University of Tampa?

17 A. About what, April.

18 Q. Okay. Do you recall about when in April?

19 A. Pardon me?

20 Q. Do you remember about when in April it was?

21 A. No.

22 Q. Okay.

23 A. Middle, I know it's middle of April.

24 Q. Okay. The middle of April?

25 A. Yes.

1 Q. Okay. And did you ever work on anything besides
2 exterior walls at the University of Tampa?

3 A. Yes. We work inside, too.

4 Q. Okay. What were you working on inside?

5 A. We was building columns.

6 Q. Okay. Did you -- what floors or floors did you build
7 the columns on?

8 A. We did on the first floor and the second floor.

9 Q. Okay. And about how long after you arrived at the
10 University of Tampa job did you move inside to work on the
11 columns?

12 A. After 2 weeks.

13 Q. Okay.

14 A. Three weeks.

15 Q. Okay. And how tall are the columns?

16 A. Like 14 feet high.

17 Q. Okay. Do they go all the way to the ceiling?

18 A. Yes.

19 Q. Okay. And how wide are the columns, or --

20 A. No more than 5 feet by 2.

21 Q. Okay. And how many masons did it take to build each
22 column?

23 A. Two.

24 Q. Okay. Were you paired with the same partner every day?

25 A. No.

1 Q. Or did it rotate?

2 A. No. They rotated.

3 Q. Okay. Was there a particular person you were paired
4 with more than anyone else?

5 A. I don't got your question.

6 Q. Did you ever pair with another mason regularly, even if
7 you rotated with other people?

8 A. Yes. I work with different masons. I mean --

9 Q. Okay. Did you ever partner with Wally Stevenson?

10 A. Yes.

11 Q. Okay. And for the record, Mr. Acevedo, how tall are
12 you?

13 A. I'm 6.

14 Q. Okay. Six foot even?

15 A. Yes.

16 **(General Counsel's Exhibit 13 marked for identification.)**

17 Q. BY MS. LEONARD: Okay. If you could, please, look at
18 General Counsel's Exhibit 13. I believe that's the one right
19 on top there. That's the new one. Okay. Mr. Acevedo, do
20 you know what this document is?

21 A. Yes.

22 Q. What is it?

23 A. That's the sign-up for the Union.

24 Q. Okay. And when did you sign up for the Union?

25 A. Like the 27 of -- 26 of January.

1 Q. Okay. Of 2016?

2 A. Yes.

3 Q. Okay. Do you recall the day that you signed it, January
4 26th? Do you recall that day?

5 A. Yeah.

6 Q. Okay.

7 A. I signed on the Union.

8 Q. What happened on that day when you signed that form?

9 How did you sign the form?

10 A. I just signed on because I'm a union member, so --

11 Q. Okay. Who gave you the form to sign?

12 A. Mr. Mike.

13 Q. Okay. And --

14 JUDGE ROSAS: I'm sorry. I didn't understand the
15 answer.

16 MS. LEONARD: He said Mr. Mike.

17 Q. BY MS. LEONARD: That's Mike Bontempo?

18 A. Mike Bontempo.

19 JUDGE ROSAS: Okay. Thank you.

20 THE WITNESS: The Union BA.

21 Q. BY MS. LEONARD: Okay. And where did Mr. Bontempo give
22 you the form?

23 A. When?

24 Q. Where. Where was --

25 A. I was working. He comes to me, and then he give me a

1 paper to sign up.

2 Q. Okay. And where were you working that day?

3 A. I was working on yacht club.

4 Q. Okay. Did he leave the form with you, or did he take it
5 with him?

6 A. He take it with him.

7 MS. LEONARD: Okay. Your Honor, I move to admit General
8 Counsel's Exhibit 13.

9 MR. HEARING: No objection.

10 JUDGE ROSAS: General Counsel's 13 is received.

11 **(General Counsel's Exhibit 13 received in evidence.)**

12 Q. BY MS. LEONARD: Okay. Mr. Acevedo, after you gave that
13 form to Mr. Bontempo, did dues start coming out of your
14 paycheck?

15 A. No.

16 Q. What, if anything, did you do when you found out that
17 your dues were not coming out of your paycheck?

18 A. When I don't see my dues come out from my check, I
19 saw -- I told the foreman.

20 Q. Okay. And which foreman is that?

21 A. Coy.

22 Q. Okay. And what did you tell Mr. Hale?

23 A. To take it out my dues from my check.

24 Q. Okay. And did Mr. Hale say anything to you?

25 A. He says he going to, he says he going to call the

1 office, but I think he forget.

2 Q. Okay. Did your dues start coming out after you talked
3 to Mr. Hale?

4 A. No.

5 Q. What happened next?

6 A. Then the safety guy, Alex Feliz, he come to the -- and
7 then I spoke to him.

8 Q. Okay.

9 A. I told him to please let -- make sure my dues come out
10 from my check.

11 Q. Okay. And about how long after you started work did you
12 speak with Mr. Feliz?

13 A. Four weeks.

14 Q. Okay. And did he say anything back to you about that?

15 A. He says he going to do it.

16 Q. Okay. And after you spoke with Mr. Feliz, did your dues
17 start coming out of your paycheck?

18 A. After 3 weeks, 2 weeks.

19 Q. Okay. So it wasn't right away?

20 A. No.

21 Q. Okay. Was this -- did the dues start coming out of your
22 paycheck before you transferred to the University of Tampa
23 job or after?

24 A. Before.

25 Q. Okay. And did you speak with Mr. Feliz in English or in

1 Spanish?

2 A. English.

3 Q. Did you ever speak with him in Spanish directly?

4 A. Never.

5 Q. For the record, what is your first language?

6 A. Spanish.

7 Q. How long have you been speaking English?

8 A. Since 1991.

9 Q. Okay. So besides the time on January 26th, when
10 Mr. Bontempo came to the yacht club, were there other times
11 when you saw Mr. Bontempo at the Employer's jobsites?

12 A. Can you start your question in English?

13 Q. Sure. We've already talked about the time on January
14 26th --

15 A. Okay.

16 Q. -- when Mr. Bontempo came. Were there any other times
17 that Mr. Bontempo came to AMS jobsites while you worked for
18 them?

19 A. Yes.

20 Q. How often would Mr. Bontempo come?

21 A. Four weeks, three weeks.

22 Q. Okay. Once every 3 or 4 weeks?

23 A. Yes.

24 Q. Okay. What would Mr. Bontempo do or say when he came to
25 the jobsites?

1 A. To the yacht club?

2 Q. Uh-huh.

3 A. No. He just come to check how we doing because it's
4 part of his job to go to the site jobs --

5 Q. Okay.

6 A. -- and see how we doing, how the members of the Union
7 doing.

8 Q. Okay. Mr. Acevedo, I'm going to show you what's been
9 entered into evidence as General Counsel's Exhibit 12. Have
10 you ever seen this T-shirt or a T-shirt like it before?

11 A. Yes.

12 Q. When have you seen the T-shirt?

13 A. In May.

14 Q. Okay.

15 A. 2016.

16 Q. Okay. And who gave you -- do you -- did you own one of
17 those T-shirts?

18 A. Yes.

19 Q. Who gave you the T-shirt?

20 A. Mike Bontempo.

21 Q. Okay. And when -- what jobsite were you at when he gave
22 it to you?

23 A. UT, University of Tampa.

24 Q. Okay. And how long after you got to the University of
25 Tampa did Mr. Bontempo give you the shirt?

1 A. After 2 weeks.

2 Q. Okay. And did anyone else take a shirt from
3 Mr. Bontempo that day?

4 A. Yes.

5 Q. Besides the shirts, did Mr. Bontempo have anything else
6 to give to masons that day?

7 A. That day, I told him to bring some, something to drink.

8 Q. Okay. Did Mr. Bontempo bring anything to drink?

9 A. Yes, because he comes around 3:30. And then I told him
10 we going to stay overtime, with no break. So that day it was
11 very hot, so we no got no water for drink. So he -- I told
12 him if he's coming late, after, he can bring something for
13 drink.

14 Q. Okay. When -- I think you testified before, 3:30 was
15 your regular quitting time?

16 A. Yes.

17 Q. Okay. And did Mr. Bontempo have any paper with him that
18 day?

19 A. Yeah.

20 Q. What did he have with him?

21 A. He supposed to give me something from, my application
22 for my insurance, because I was trying to complete my hours
23 for my, to qualify for my insurance.

24 Q. Okay. Did he have any papers that he gave to any other
25 masons that day?

1 A. Yeah. He got some papers --

2 MR. HEARING: Objection. Lack of predicate knowledge --

3 JUDGE ROSAS: He had some papers.

4 MR. HEARING: -- to establish -- well, I meant to the
5 question, did he have papers that he gave to other --

6 JUDGE ROSAS: If he saw.

7 Q. BY MS. LEONARD: Did Mr. Bontempo meet with you and
8 other masons at the same time?

9 A. Yes.

10 Q. Okay.

11 MR. HEARING: Thank you.

12 Q. BY MS. LEONARD: Did you see any of the other masons
13 take any papers from Mr. Bontempo?

14 A. Yeah. They take some application for -- some papers.

15 Q. Okay.

16 A. If you interested.

17 Q. Okay. Were these authorization cards to join the Union,
18 applications?

19 A. He -- yeah. I mean, applications.

20 Q. Okay. And did you talk with any of the masons who were
21 not already members about the Union while Mr. Bontempo was
22 there?

23 A. Yes.

24 Q. What did you say to them?

25 A. About the Union, the Union is good for them, the family,

1 about the benefits.

2 Q. Okay. And about how long was Mr. Bontempo there that
3 day?

4 A. About what?

5 Q. About how long was Mr. Bontempo there that day, the
6 second time, when he came back?

7 A. Oh, he was maybe half hour, 15, 20 minutes.

8 Q. Okay. And the union T-shirt that you got from
9 Mr. Bontempo that day, did you ever wear it to work?

10 A. Yes.

11 Q. How -- did you show more than once?

12 A. Yes.

13 Q. How often did you wear it to work?

14 A. The first week, I wear it like three, four times.

15 Q. Okay. The second week, did you --

16 A. Because I having two, so --

17 Q. Okay. How many times did you wear it the second week?

18 A. The same thing, two, three times.

19 Q. Okay. Were there ever any time -- weeks where you
20 didn't wear it to work?

21 A. Well, I -- when it's dirty, so I no have to wear my
22 dirty shirt, you know, so --

23 Q. Okay.

24 MR. HEARING: I'm sorry. I couldn't understand the
25 answer.

1 Q. BY MS. LEONARD: Sir, could you repeat your answer?

2 A. I say what -- I used to -- when my shirt is dirty, so I
3 use other shirt.

4 Q. Okay.

5 A. So I don't use the same shirt.

6 Q. Okay. When it's dirty, okay.

7 MR. HEARING: Okay.

8 Q. BY MS. LEONARD: Did anyone else who had taken a shirt
9 from Mr. Bontempo wear it to work?

10 A. Yes.

11 Q. How often did those employees wear them?

12 A. How what?

13 Q. How often did those employees wear them?

14 A. Oh, I saw a couple of guys, they wearing like once.

15 Q. Okay. Did anyone else wear a shirt as often as you did?

16 A. Yes.

17 Q. Okay. Did most people wear it as often as you did? Or
18 did you wear it more?

19 A. I wear it more than anybody.

20 Q. Okay. Did any supervisors at AMS say anything to you or
21 the other employees about Mr. Bontempo being on the jobsite?

22 A. The next day.

23 Q. Okay. Who spoke to you about it?

24 A. Mario Morales.

25 Q. Okay. What --

1 A. He comes to me.

2 Q. What did Mr. Morales say to you?

3 A. He say if I -- what paper did I sign up.

4 MR. HEARING: I don't understand.

5 JUDGE ROSAS: Repeat the last part, please?

6 THE WITNESS: I say, he asking me what papers did I sign
7 up.

8 MR. HEARING: Okay.

9 THE WITNESS: Day before.

10 Q. BY MR. HEARING: And what did you answer Mr. Morales?

11 A. I say, I don't say nothing. I just -- because I'm a
12 union, I'm a member already from the Union.

13 Q. Okay. And did Mr. Morales say anything more after that?

14 A. No.

15 Q. What time of day did that conversation take place?

16 A. Early in the morning, first thing in the morning.

17 Q. Okay. And where was that conversation?

18 A. It was outside of -- on the parking lot.

19 Q. Okay. And did you ever hear any other foreman or
20 managers of AMS make comments about the Union?

21 A. Yes.

22 Q. Who was that?

23 A. Turbo.

24 Q. Okay. That's Mr. McNett?

25 A. Yes.

1 Q. And what did Mr. McNett say?

2 A. Say about, bad things about the Union.

3 Q. Okay. Do you remember any specific bad things he would
4 say?

5 A. Say that they steal our money that we deserve.

6 Q. Okay. And how often did you hear Mr. McNett say these
7 things?

8 A. Maybe twice a week, three times a week.

9 Q. Okay. And would you respond to Mr. McNett at all?

10 A. Sometimes I -- one time he make me, I mean, tired of
11 that all the time. I say, I just keep going with him, the
12 conversation.

13 Q. Okay, sorry. Just to clarify, you said, when you were
14 tired of hearing him?

15 A. Yeah.

16 Q. Okay. So you had previously testified that you met
17 Mr. Feliz at the yacht club and spoke to him about your dues
18 form. Were there any other times when Mr. Feliz came to the
19 Westshore Yacht Club?

20 A. Yeah. He come -- he comes like other two times.

21 Q. Okay. How often would that be, maybe?

22 A. Maybe -- he comes every other week, every week.

23 Q. Okay. Did you interact with Mr. Feliz the other times
24 he came to the jobsite?

25 A. Yes. I say one time, twice, I say, thank you very much

1 for the chance.

2 Q. Okay. And what did you mean, thank you very much for
3 the chance?

4 A. Because he hiring me.

5 Q. Okay.

6 A. After so many calls that I did, I gave it to him.

7 Q. Okay.

8 A. Three year.

9 Q. Okay. And did Mr. Feliz ever go to the University of
10 Tampa jobsite?

11 A. Yes.

12 Q. How often would that be?

13 A. I saw like three times.

14 Q. Okay. And did you ever interact with Mr. Feliz when he
15 was at the University of Tampa jobsite?

16 A. When he comes -- I don't say anything to him, so I mean,
17 I say hello, hello.

18 Q. Okay.

19 A. Once.

20 Q. Okay. Was there ever a time when Mr. Feliz spoke to you
21 or the other masons when he came to a University of Tampa
22 jobsite?

23 A. No. It was a different day.

24 Q. At the University of Tampa?

25 A. Yeah. He comes -- like I told you, he comes to like,

1 three, four times. So one time he comes, he call all the
2 masons that spoke, and they speak Spanish.

3 Q. Okay. And how many people was that?

4 A. Maybe eight masons.

5 Q. Okay. And when -- what time of day did he call you all
6 together?

7 A. Lunch time. In lunch time.

8 Q. Okay. And where did he, where did he gather you, the
9 Spanish-speaking masons?

10 A. What you mean?

11 Q. Where did he take you, the Spanish-speaking masons?

12 A. Oh, we was taking lunch on the inside of the building.

13 Q. Okay. Was this while you were working inside the
14 building or while you were working on the exterior?

15 A. We were working inside in that time.

16 Q. Okay. Okay. And so you said there were about eight
17 masons present that day?

18 A. Yeah, eight masons.

19 Q. Do you remember any of their names?

20 A. Yeah. It was three brothers, Salvador Camacho, Armando
21 Camacho, and Ramon Camacho. There was Carlos. There was
22 other -- Lucio. Lucio, I think it's Lucio Guerra, Carlos,
23 and other Spanish. There are Alfredo, some other guys.

24 Q. Okay. And what did Mr. Feliz say to the masons that
25 day?

1 A. Say to -- he say to don't let the -- there's going to be
2 elections, and he wants us to vote for no, no union, because
3 the Union is taking our money. If you, we vote yes for
4 union, our rate is going to going down, to --

5 Q. Okay. The -- what rate would go down?

6 A. Our mason rate is going to go down.

7 Q. Your wages?

8 A. Yes.

9 Q. Okay. And -- sorry, continue. Did he say anything
10 else?

11 A. He say it's going to go down to 18-something, 18 and
12 change.

13 Q. Okay. For the record, how much were you earning at that
14 time per hour?

15 A. Twenty-two an hour.

16 Q. Okay. Did Mr. Feliz say anything else to the masons?

17 A. No. He said, just no, don't vote for the Union.

18 Q. Okay. Did Mr. Feliz have anyone else from the Company
19 management with him that day?

20 A. No.

21 Q. Okay. Did you ever meet Mr. Richard Karp?

22 A. Never.

23 Q. Okay. Did anyone answer Mr. Feliz at that meeting?

24 A. I do.

25 Q. Okay. What did you say?

1 A. It's not true.

2 Q. Okay. Did Mr. Feliz say or do anything?

3 A. No. He just give me, he just give me a mean look, like
4 he was mad, the way that he look at me.

5 Q. Okay. And did any of the other masons say anything
6 to --

7 A. No.

8 Q. -- Mr. Feliz during that meeting? Did anyone ask any
9 questions?

10 A. No.

11 Q. Okay. Now, Mr. Acevedo, when you began working for AMS,
12 was there any kind of orientation for new employees?

13 A. Safety orientation Mondays, Monday morning.

14 Q. Okay. That was a regular Monday morning training?

15 A. Yes. After the general contractor safety meeting.

16 Q. Okay.

17 MR. HEARING: I'm sorry. I couldn't understand the last
18 question/answer.

19 MS. LEONARD: After the general contractor safety
20 meeting.

21 MR. HEARING: I'd rather hear from the witness. Can I
22 have that last answer repeated?

23 JUDGE ROSAS: Well, repeat the question then.

24 MS. LEONARD: Sure.

25 Q. BY MS. LEONARD: When were the Monday safety meetings?

1 A. Safety meetings, we -- the meetings inside of a building
2 by the general contractor.

3 Q. Okay.

4 A. So after that, we going to the trailer, where is meeting
5 to AMS, and he got another meeting for us, for 5 minutes, 10
6 minutes.

7 Q. Okay. Who would lead that meeting?

8 A. Turbo.

9 Q. Okay. And you just said Mr. Turbo's meeting lasted 5 or
10 10 minutes?

11 A. Yes.

12 Q. Okay. How long would the general contractor's meetings
13 last?

14 A. Like 15 minutes.

15 Q. Okay. Was there ever a time -- if you could look at
16 General Counsel's Exhibit 2. It's on the right there. Yeah.

17 A. GC-2?

18 Q. Yeah, just that. If you could flip through that, and
19 let me know, did you ever receive an orientation that covered
20 all of those topics in one day?

21 A. No.

22 Q. Okay.

23 A. You just -- no. Never.

24 Q. Okay. And looking at the back of that, the second to
25 last page, do you recognize your signature anywhere on

1 General Counsel's Exhibit 2(c)?

2 A. Yeah, that's my name. That's my signoff.

3 Q. Okay. Did you attend an orientation on February 9th?

4 A. February 9th, they must be working in yacht, in the
5 yacht club, Westshore, so -- so far that I remember, I only
6 got one safety orientation for the harness.

7 Q. Okay.

8 A. After that, we just going there early in the morning.
9 Monday morning, we sign out a paper, and they'll say, we
10 write our name to go to work.

11 Q. Okay. Thank you very much. So what was the one fall
12 protection training on the harness that you received? When
13 was that?

14 A. That was, it must be in March.

15 Q. Okay. And where did that occur?

16 A. That was in the yacht club.

17 Q. Okay. Who led that training?

18 A. Fernando.

19 Q. Okay.

20 A. The safety guy.

21 Q. Okay. That's Mr. Fernando Ramirez?

22 A. Yes.

23 Q. Okay. Was he the only person who led that training?

24 A. Yes.

25 Q. Okay. Who attended the training?

1 A. All the workers.

2 Q. Okay. Not just masons?

3 A. Masons and laborers.

4 Q. Okay. And about how long did Mr. Ramirez's training
5 last?

6 A. Twenty-five minutes, twenty minutes.

7 Q. What did Mr. Ramirez tell you about fall protection
8 during that training?

9 A. He was teaching something about to, on the rail, on the
10 floor, blow the pin, and lock it up to the yoyo.

11 Q. Okay. And how would you attach the yoyo to your
12 harness?

13 A. The yoyo to my harness?

14 Q. What would you use to attach yourself to the floor?

15 A. Yeah. We had to tie it up to my back of my harness to
16 the floor because we were being exposed to the street.

17 Q. Okay. And did you use fall protection at the Westshore
18 Yacht Club job?

19 A. Yes.

20 Q. Okay. Did everyone use fall protection at the Westshore
21 Yacht Club job?

22 A. Yes.

23 Q. Okay. Did Mr. Ramirez give any training that day about
24 attaching a harness to scaffolding?

25 A. No.

1 Q. Did Mr. Ramirez demonstrate how to attach a harness to
2 fall protection that day, with actual equipment?

3 A. Yeah. He give you a orientation how to wearing the
4 harness.

5 Q. Okay.

6 A. How to tie the yoyo to the floor.

7 Q. Okay. Where did the training take place specifically?
8 Was there --

9 A. Out -- was outside of the building.

10 Q. Okay. On the ground?

11 A. On the ground.

12 Q. Okay. Have you ever received any training to receive --
13 to attach your safety harness to scaffolding?

14 A. No.

15 Q. Okay. And if you could, still in that packet, General
16 Counsel's 2, the third to last page is a flyer. It's General
17 Counsel's Exhibit 2(b). Yeah.

18 A. This one?

19 Q. Yes, that one. If you could take a minute and look at
20 the top half of that, and tell me if that describes the
21 training that Mr. Ramirez gave you at the yacht club that
22 day.

23 A. No.

24 Q. How is it different?

25 A. Because you are supposed to tie it up to the floor.

1 It's not to the top.

2 Q. Okay.

3 A. When we working exposed to the, to outside of the
4 building.

5 Q. Okay. All right. Were there any other occasions,
6 besides this training that Mr. Ramirez gave at the yacht
7 club, when you received fall protection training from AMS?

8 A. Could you start again, please?

9 Q. Sure. Besides this time when Mr. Ramirez came to the
10 yacht club, did you receive any other training on fall --

11 A. No.

12 Q. -- protection from AMS?

13 A. No.

14 Q. Okay. All right. Do you recall Monday, May 16th of
15 2016?

16 A. (No audible response.)

17 Q. Okay. Do you recall whether there was a safety meeting
18 that day?

19 A. Yes.

20 Q. Do you know who led that meeting?

21 A. Mr. McNett, or Turbo.

22 Q. Okay. Do you recall what Mr. McNett said during that
23 meeting that day?

24 A. I don't got your question.

25 Q. Did -- do you remember what Mr. McNett said that day?

1 A. He say something about like it's -- like he say all the
2 time about to -- I mean, it's anybody make a mistake, they
3 going to -- you going to repair on your own time with no pay.

4 Q. Okay.

5 A. So he say that thing every Monday.

6 Q. Okay.

7 A. All the time. All the time.

8 Q. Did anyone say anything about fall protection during
9 that meeting that morning?

10 A. No. I don't remember. I don't remember that day if he
11 say, they say anything about fall protection.

12 Q. Okay. What -- prior to Monday, May 16, you had been at
13 the University of Tampa job since mid-April. Had you worn
14 fall protection at all at that jobsite?

15 A. Not all.

16 Q. Okay. And when you were working on the exterior walls,
17 could you describe what the scaffolding looked like while you
18 worked there?

19 A. Outside?

20 Q. Uh-huh, yes. Outside.

21 A. Yeah, that's -- they got a pedal scaffold.

22 Q. A what scaffold?

23 A. They call pedal, so --

24 Q. Oh, okay. A crane?

25 A. Yeah, like a crane. One wall, so we working towards a,

1 face towards the wall. We no -- so we don't use no harness,
2 or -- you're supposed to use harness, tie off to the ceiling
3 of the building because that's -- the building is already
4 there.

5 Q. Okay.

6 A. But we don't use no harness.

7 Q. Okay.

8 A. So those scaffold move. Somebody raise, raise the
9 scaffold on one side, other -- everybody have to raise the
10 scaffold in the same time.

11 Q. Okay. Did that scaffolding have any railings?

12 A. They got railings.

13 Q. Okay. Where were the railings?

14 A. To the -- where the laborers are working.

15 Q. Okay. About how far was it from where the masons were
16 working that there were railings?

17 A. Five feet, or five footers.

18 Q. Okay. And when you moved inside to work on the columns,
19 what kind of scaffolding did you use?

20 A. We got a metal scaffold. Scaffold, I mean, metal
21 scaffold.

22 Q. Okay. And were there railings on that scaffolding?

23 A. Yes.

24 Q. Was it the same configuration as the outside railings?

25 A. No.

1 Q. How was it different?

2 A. It was two different scaffolds.

3 Q. Okay. Where were the railings, if there were any on
4 that scaffolding?

5 A. On the sides.

6 Q. Okay. And not on the back?

7 A. In the back, they got a cross-bracers.

8 Q. They -- sorry, they have what?

9 A. Cross-bracers.

10 Q. What are those?

11 A. That's the cross -- the metal to tie down the scaffold.

12 Q. Okay. Cross-bracers?

13 A. To make, go to the -- cross-bracers.

14 Q. Okay. All right. So you had not worn fall protection
15 at all prior to that day --

16 A. No.

17 Q. -- at the jobsite?

18 MR. HEARING: Objection. Asked and answered, and
19 leading.

20 JUDGE ROSAS: Sustained.

21 Q. BY MS. LEONARD: Did you begin wearing fall protection
22 that day?

23 A. Mario comes to me and say -- he asking me if I got a
24 harness because I don't -- they don't got enough harness for
25 everybody.

1 Q. Okay.

2 A. Say I do. I got my personal harness. It's in my car.

3 Q. Okay. And what time of day did Mr. Morales come ask you
4 that?

5 A. It was in the morning.

6 Q. Okay. Was it before you started work?

7 A. Yes.

8 Q. Okay. And after you told Mr. Morales that your harness
9 that you owned was in your car, what did you do?

10 A. So I went to grab my harness with my equipment, and then
11 I start working on the second floor on the scaffold.

12 Q. Okay. And who were you working with that day?

13 A. I was partnering with Walter, Walter Stevenson.

14 Q. Okay. All right. And how did you attach your harness
15 to the scaffolding that day? Or how did -- I'm sorry.
16 Strike that.

17 How did you use fall protection that day?

18 A. That day, we -- so we got the scaffold. So I hook it
19 up, my yoyo behind me, and my strap inside the scaffold and
20 tie that to my back.

21 Q. Okay. And specifically where was the yoyo attached?

22 A. It was behind the scaffold.

23 Q. Okay. To what was it attached?

24 A. Attached on the metal.

25 Q. Okay.

1 A. So we grab it. We got a clamp to grab it, bring inside.
2 Then the yoyo to my strap, then my strap went inside the
3 scaffold, towards my back.

4 Q. Okay. And when Mr. Morales told you to go get your
5 harness, did he say anything about how to attach or tie off
6 that day?

7 A. No.

8 Q. Okay. Did Mr. McNett say anything about how to tie off
9 that day?

10 A. No.

11 Q. Did any other supervisors speak to you about fall
12 protection that day?

13 A. No.

14 Q. Okay. Did anyone speak to you about how you were tied
15 off that day?

16 A. No.

17 Q. Okay. Could you look at General Counsel's Exhibit
18 Number 5 in front of you, please?

19 JUDGE ROSAS: They're on the left.

20 MS. LEONARD: Yeah.

21 THE WITNESS: What was your question before that?

22 Q. BY MS. LEONARD: Okay. My question before that was did
23 any supervisors talk to you about how you were tied up that
24 day?

25 A. Yes.

1 Q. Okay.

2 A. I mean --

3 Q. Who talked to you about it?

4 A. Around 8:30, Mr. McNett comes up there, to the second
5 floor. He's screaming at me. And he told me, what are you
6 doing?

7 Q. Okay.

8 A. I was surprised, so I thought I did something wrong with
9 my job. He's screaming. He say, what do you do? You're not
10 supposed to tie this, the harness like that.

11 Q. Okay.

12 A. So he took me out of my harness, my strap, my yoyo, the
13 strap, and he turned around to the scaffold, like he did a
14 lot of, like a lot of turns. And then he put it in my back.

15 Q. Okay. He wrapped it around?

16 A. Yes.

17 Q. Okay. About how many times would you say he wrapped it
18 around?

19 A. Like 20 times. I mean, for me, I mean, it's odd because
20 he was doing and doing and doing, you know.

21 Q. Okay. And did you say anything to Mr. McNett at that
22 time?

23 A. In that time? Yeah. I say -- I mean, I say that we are
24 not supposed to tie it onto the scaffold by OSHA regulations.

25 Q. Okay. And did Mr. McNett say anything?

1 A. He say -- before that, he told me if I get -- before
2 that, he told me if I get a safety harness orientation. I
3 say no because I never got orientation to tie it onto the
4 scaffold.

5 Q. Okay. And then so you were talking about OSHA
6 regulations?

7 A. Yes.

8 Q. Did he respond to that?

9 A. He said -- he don't say nothing. He just walk away.

10 Q. Okay. And was Mr. Stevenson wearing a safety harness at
11 that time --

12 A. Yes.

13 Q. -- as well? How was Mr. Stevenson's harness attached?

14 A. It was attached on the scaffold, too, but on the middle
15 of the scaffold.

16 Q. Okay. Did Mr. McNett say anything about Mr. Stevenson's
17 attachment at that time?

18 A. He say more to me. So I was -- because I was surprised
19 when he was screaming at me. I mean, he more comes to me,
20 and say, that's not supposed -- that's not the way they're
21 supposed to tie it up to the scaffold.

22 Q. Okay. Did you see how any of the masons working on the
23 other columns were tied up that day?

24 A. Everybody, I mean, everybody was tied on to the
25 scaffold.

- 1 Q. Okay. But you didn't see how specifically?
- 2 A. Not the way that he did it to me.
- 3 Q. Okay. How were they tied up instead?
- 4 A. The other ones?
- 5 Q. Yeah.
- 6 A. Later -- hook it up to the scaffold.
- 7 Q. Okay. Was it the same way you had been?
- 8 A. I mean, different way, because everybody thinks
- 9 different, different way, you know, tie it up to the
- 10 scaffolds or to the cross-bracer --
- 11 Q. Okay.
- 12 A. -- to his back.
- 13 Q. Okay. Now, if you could look again at General Counsel's
- 14 Exhibit 5 in front of you there; do you recognize that
- 15 document?
- 16 A. Yeah, I recognize my signing because I signed all these
- 17 paper.
- 18 Q. Okay. Do you remember signing the paper?
- 19 A. Yes.
- 20 Q. When did you sign that paper?
- 21 A. Was in lunchtime, the 16th of May.
- 22 Q. I'm sorry, what?
- 23 A. Sixteenth of May. May 16.
- 24 Q. The 16th? Okay, great. Thank you. Who gave you that
- 25 paper to sign?

1 A. Fernando.

2 Q. Okay. And was anyone with Fernando?

3 A. Fernando. Mr. McNett was there screaming at me. I
4 mean, he say to me and that I was lying to him, that I get a
5 safety orientation.

6 Q. Okay. Did you say anything back to them?

7 A. I say yeah, I get safety orientation but not tie it up
8 to my back.

9 Q. Okay.

10 A. I said, by law, nobody's supposed to tie it up to the
11 scaffold.

12 Q. Okay.

13 A. I said to him.

14 Q. And prior to Mr. Ramirez giving you the paper to sign,
15 did you speak to him at all that day?

16 A. To Mr.?

17 Q. To Mr. Ramirez, Fernando.

18 A. Yeah. He say to me, hey, Luis, you have to sign all
19 these paper because you going to, going home for the day.

20 Q. Okay. Did he talk to you before he gave you the paper
21 at all?

22 A. No.

23 Q. Okay. Was there anything more to the conversation you
24 had when you signed the paper?

25 A. No. I mean, I told Mr. Turbo that I was -- we never use

1 a harness, even working outside. I mean, the height that we
2 were working with no, I mean, no harness, risking our life.
3 And now, so now you require me to wearing a harness, working
4 only 7 foot high, you know. And then he say that I'm lying
5 to him. I mean, you're not supposed to use harness when you
6 working towards the, faced towards the wall, he say.

7 Q. Okay.

8 A. And then he say, you got to go home for today.

9 Q. Okay. Did -- was anyone else present for that
10 conversation?

11 A. In that way that was -- I raised my voice a little bit,
12 when I was spoken to Mr. Turbo.

13 Q. Sure.

14 A. Then Walter was coming by because they were looking for
15 Walter because was lunchtime. So they were looking for
16 Walter. Walter was arriving --

17 Q. Okay.

18 A. -- towards us.

19 Q. Do you know whether they also sent Mr. Stevenson home
20 that day?

21 A. Yes.

22 Q. How do you know that?

23 A. Because we go home together.

24 Q. Okay.

25 A. He sign the paper, too, and we go home together.

1 Q. Okay.

2 A. I mean, we went to the -- we park in the same parking
3 lot. So we walked together.

4 Q. Okay, great. And then what happened -- actually, if you
5 could look at next, the General Counsel's Exhibit Number 9.
6 I think that's just the next one right there.

7 A. Okay.

8 Q. Okay. When did you -- do you -- have you ever seen that
9 paper before?

10 A. Never.

11 Q. Okay. Then just put it aside. How did you find out
12 that you had been discharged by the Employer?

13 A. I show up next day, as regular, I show early in the
14 morning.

15 Q. Okay.

16 A. I come to sign off my name, and he say -- Mr. McNett --
17 that was Mr. McNett, Mario Morales, and some other laborer.
18 I don't know his name. He say, I will let you go. So I say,
19 I don't get it. What that mean?

20 Q. And what did Mr. McNett say?

21 A. He said no, because you violated on safety regulations.

22 Q. You violated the safety regulations?

23 A. Yes.

24 Q. Okay. And did you say anything back to Mr. McNett?

25 A. Yes. I say that I am -- nobody's supposed to tie it up

1 to the scaffold by OSHA regulations.

2 Q. Okay.

3 A. He say that I'm lying to him. And he say -- I told him,
4 so I don't get it. Why do you let me go? I don't get it,
5 that part. So I'm laid off? He say, no, you fire, he say to
6 me.

7 Q. Okay.

8 A. So he's like screaming at me, no, you fire.

9 Q. Okay.

10 A. And then I say, so you fire me because I'm a union guy?
11 And he say, this is America; fight for your rights, he say to
12 me.

13 Q. Okay. That -- were those his exact words?

14 A. Yes.

15 Q. Okay. And if we can look back at General Counsel Number
16 5, the paper you signed.

17 A. This one?

18 Q. Yes. Does that notice accurately state that this was
19 your first written warning about fall protection?

20 A. Yes. It's the first one.

21 Q. Okay. Had you ever received any written warnings of any
22 kind from the Employer prior to this?

23 A. No, never.

24 Q. And did you ever receive any verbal warnings about fall
25 protection?

1 A. Never.

2 Q. And after Mr. McNett discharged you that morning, what
3 did you do next?

4 A. I went to the parking lot, and then I make a -- I mean,
5 I was sad because, I mean, the way that he told me, you fire,
6 you know.

7 Q. Okay. What did you do in the parking lot?

8 A. So I make a call. I call -- I remember that I called
9 Wally because it was kind of raining that day, but we was
10 working inside, so that wasn't going to affect our work.

11 Q. Okay.

12 A. And then I spoke to Wally. I told him, hey, they send
13 me home. So he told me he's trying to call him, Turbo, but
14 he don't pick up the phone.

15 Q. Okay.

16 A. Okay. I say, okay. So and then, the same time I call,
17 after I'm done with him, I call Mr. Feliz. And they -- I
18 explain what happen. And he say, Luis, that's the way it is.
19 That what it is. There's nothing that we can do. I'm sorry,
20 that's what it is.

21 Q. Okay. And did you ever file for unemployment benefits
22 after you were discharged?

23 A. Yes. I want to go back there, because that day, the
24 money that I was earning with Mr. Turbo. So I told him, hey,
25 so you fire me, so I don't got -- so I don't -- so I can't

1 collect unemployment. He say no, you fired again. He repeat
2 that word, fire me.

3 Q. Okay. Thank you. So where --

4 A. So that day --

5 Q. You did file for unemployment?

6 A. Yeah. That day I call unemployment because I was
7 working in Connecticut.

8 Q. Okay.

9 A. So I qualify for unemployment in Connecticut. And then
10 I fill it out. I fill out all the forms by phone.

11 Q. Okay. And what was the outcome of that unemployment
12 claim?

13 A. Start again?

14 Q. What was the outcome of that unemployment insurance
15 claim? Did you get unemployment?

16 A. Yes, after a while. After, because they have to figure
17 out what happened, why were you really hired.

18 MR. HEARING: Objection. Hearsay, and also relevance.

19 JUDGE ROSAS: Are you offering the report?

20 MS. LEONARD: I believe that the Respondent had
21 introduced some documents of their correspondence with the
22 Connecticut Department of Unemployment.

23 JUDGE ROSAS: Yeah. What do you have?

24 MR. HEARING: We don't have the findings, just the
25 application, so --

1 JUDGE ROSAS: Just the application?

2 MR. HEARING: Yeah. I think it was just the application
3 is what -- all we presented.

4 MS. LEONARD: Additional, there in evidence already is
5 Brandon Carollo's unemployment claim, which was unsuccessful,
6 and so we'd just like to demonstrate the contrast of how
7 Mr. Acevedo did.

8 MR. HEARING: But the point I'm making about hearsay is,
9 is that if he's referring to a document or something that was
10 told to him from the State of Connecticut, then he's -- and
11 he's only going to verbally relate it, that's hearsay.

12 JUDGE ROSAS: Well, that's one thing. If you're not
13 going to offer it, it's not the best evidence. Number 2,
14 while we generally receive, not as conclusive evidence, but
15 as potentially leading to some relevant evidence, background
16 or otherwise, in these proceedings, unemployment reports,
17 this is not Florida. This is Connecticut. I'm a little -- I
18 guess I'm a little vague as to regarding the process and the
19 weight, the extent to which the State of Connecticut would
20 perform any kind of -- what their process would entail versus
21 the State of Florida.

22 MS. LEONARD: Okay.

23 JUDGE ROSAS: That's just something that's hanging in
24 the back of my mind here. This is work in Florida, and the
25 state with jurisdiction over his job is, for regulatory

1 purposes of the federal government or the State of Florida,
2 but he had an entitlement to file with Connecticut. I
3 understand that. But I'm just, I just have some questions
4 here. I'm going to need some further proof indicating the
5 reliability as potentially relevant evidence.

6 MS. LEONARD: Okay. We are working on finding that, and
7 I can move on to other things --

8 JUDGE ROSAS: Okay. All right.

9 MS. LEONARD: -- while we do that.

10 Q. BY MS. LEONARD: So, Mr. Acevedo, thank you for your
11 patience. Are you aware of any other employees who have been
12 disciplined by AMS for fall protection violations?

13 A. Yes.

14 Q. Who is that?

15 A. Mr. Fernando fire -- he send them home for the day, to
16 Timothy Bryant.

17 Q. Okay. And where was that?

18 A. Was in the yacht club.

19 Q. Do you remember when that was?

20 A. Not exactly.

21 Q. Okay. And how do you know that Mr. Bryant was sent home
22 for the day?

23 A. Because we was working on the second floor. I was
24 working towards -- with my harness, looking to the outside.
25 And Mr. Timothy was working on the staircase with no harness

1 at all.

2 Q. Okay.

3 A. So when I turn around, Mr. Fernando was coming inside to
4 the stairs, and he told me in Spanish, don't say nothing. I
5 want to send that guy home.

6 Q. Okay. And then what happened next?

7 A. So he went inside of the building, the second floor, and
8 he say, hey, you come down. You go home for today. He
9 signed some papers. He went home for the day.

10 Q. Okay. And did you ever see Mr. Bryant at the yacht club
11 jobsite again?

12 A. Yes. He went back to work -- I don't see the next day,
13 but the day after, he start working.

14 Q. Okay. And did you ever speak with anyone at the Union
15 about being discharged by AMS?

16 A. Did I speak to anybody in the Union?

17 Q. Yeah, at the -- like the BA.

18 A. Yes.

19 Q. Okay. And who did you speak with at the Union?

20 A. That day that I get fire, is fire?

21 Q. Sure.

22 A. Yeah. The day that I get fire, I call the BA,
23 Mike Bontempo.

24 Q. Okay. And what did you tell Mr. Bontempo?

25 A. I explain what happened to me.

1 Q. And what did Mr. Bontempo say?

2 A. So --

3 MR. HEARING: Objection. Hearsay.

4 JUDGE ROSAS: Hold on a second.

5 MS. LEONARD: Mr. Bontempo already testified about it.

6 He was here today, the other side.

7 JUDGE ROSAS: Do you dispute that? That you had an
8 opportunity to cross-examine him regarding this transaction?
9 I'm going to check it.

10 MR. HEARING: About what was said about the firing?

11 JUDGE ROSAS: About this conversation.

12 MR. HEARING: Yeah, well --

13 JUDGE ROSAS: Something in the nature of this
14 conversation between Mr. Alvarez [sic] and Mr. Bontempo.

15 MR. HEARING: I didn't ask him about a conversation
16 between Mr. -- I didn't ask Mr. Bontempo about a conversation
17 with Mr. Acevedo about his firing.

18 MS. LEONARD: But he testified about it on direct, I
19 believe.

20 JUDGE ROSAS: Hold on.

21 **(Pause.)**

22 JUDGE ROSAS: That was actually -- I'm not sure about
23 the General Counsel, but it was brought up by the Charging
24 Party on cross-examination at the outset. So you had an
25 opportunity to cross-examine about that. Overruled.

1 MS. LEONARD: There wouldn't --

2 JUDGE ROSAS: What is that?

3 MS. LEONARD: Just point in fact, wouldn't that be the
4 Charging Party's direct examination as well?

5 JUDGE ROSAS: Charging -- well, Charging Party direct or
6 cross, I mean, however -- I mean, your -- it's your direct.

7 MS. LEONARD: Okay.

8 JUDGE ROSAS: Whatever. It's -- you're the -- well, I
9 guess you're both making a prima facie case. You're right.
10 You're right. You're right. It's because it's in our case
11 here.

12 MS. LEONARD: Okay.

13 JUDGE ROSAS: All right.

14 MS. LEONARD: Your Honor, if we could have a few minutes
15 to just make some copies before I finish with Mr. Acevedo?

16 JUDGE ROSAS: No. We're going to break at this point.

17 MS. LEONARD: Okay. Thank you very much.

18 JUDGE ROSAS: Okay. All right. We'll resume tomorrow.

19 **Off the record.**

20 **(Off the record from 4:49 p.m. to 4:50 p.m.)**

21 JUDGE ROSAS: So, all right. So we're adjourned till
22 tomorrow at 9:30 a.m. All right, thank you.

23 **(Whereupon, at 4:50 p.m., the hearing in the above-entitled**
24 **matter was continued, to resume the next day, Wednesday,**
25 **February 8, 2017, at 9:30 a.m.)**

CERTIFICATION

1
2 This is to certify that the attached proceedings before
3 the National Labor Relations Board (NLRB), Region 12, in the
4 matter of **ADVANCED MASONRY ASSOCIATES, LLC, d/b/a ADVANCED**
5 **MASONRY SYSTEMS**, Case No. 12-RC-175179 and 12-CA-176715, at
6 Tampa, Florida, on February 7, 2017, was held according to
7 the record, and that this is the original, complete, and true
8 and accurate transcript that has been compared to the
9 recording, at the hearing, that the exhibits are complete and
10 no exhibits received in evidence or in the rejected exhibit
11 files are missing.

12
13
14
15
16 

17 Ann Connell

18 Official Reporter

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

In the Matter of:

ADVANCED MASONRY ASSOCIATES, LLC,
d/b/a ADVANCED MASONRY SYSTEMS,

Employer/Respondent,
and

BRICKLAYERS AND ALLIED
CRAFTWORKERS, LOCAL 8 SOUTHEAST,

Petitioner/Charging Party.

Case No. **12-RC-175179**
12-CA-176715

The continuation of the above-entitled matter came on for hearing pursuant to notice, before **MICHAEL A. ROSAS**, Administrative Law Judge, at the **National Labor Relations Board, 201 East Kennedy Boulevard, Suite 530, Tampa, Florida**, on **Wednesday, February 8, 2017**, at **9:30 a.m.**

A P P E A R A N C E S

Counsel for the General Counsel:

CAROLINE LEONARD, Esq.
National Labor Relations Board, Region 12
201 East Kennedy Boulevard, Suite 530
Tampa, FL 33602
caroline.leonard@nlrb.gov

On Behalf of the Petitioner/Charging Party:

KIMBERLY C. WALKER, Esq.
Kimberly C. Walker, P.C.
14438 Scenic Highway 98
Fairhope, AL 36532
(251) 928-8461
kwalker@kcwlawfirm.com

On Behalf of the Employer/Respondent:

GREGORY A. HEARING, Esq.
CHARLES J. THOMAS, Esq.
Thompson, Sizemore, Gonzalez & Hearing, P.A.
One Tampa City Center
201 N. Franklin Street, Suite 1600
Tampa, FL 33602
(813) 273-0050
ghearing@tsghlaw.com
cthomas@tsghlaw.com

1		<u>I N D E X</u>				
2						<u>VOIR</u>
3	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
4						
5	Luis A. Acevedo	442	447	497	--	--
6						
7	Raymond S. Pearson	504	--	--	--	--
8						
9	Fernando Ramirez	512	555	602	--	--
10			573			
11						
12	Brent McNett	604	--	--	--	658
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						

1	<u>E X H I B I T S</u>		
2	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
3	GENERAL COUNSEL'S		
4	GC-1 (r)	501	502
5			
6	RESPONDENT'S		
7	R-14	622	623
8	R-15 and R-16	538	539 - Withdrawn
9	R-18	635	636 - Withdrawn
10	R-27	654	655
11	R-29	659	662
12	R-32	657	659
13	R-59	472	Not Offered
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 P R O C E E D I N G S

2 (Time Noted: 9:34 a.m.)

3 JUDGE ROSAS: Okay, on the record.

4 Continuation?

5 MS. LEONARD: Your Honor, after conferring with Regional
6 management last night, the General Counsel has no more
7 questions for Mr. Acevedo.

8 JUDGE ROSAS: Okay. Charging Party?

9 MS. WALKER: Yes, Your Honor. Thank you.

10 (Whereupon,

11 **LUIS A. ACEVEDO**

12 was recalled as a witness by and on behalf of the General
13 Counsel and, having been previously duly sworn, was examined
14 and testified as follows:)

15 **DIRECT EXAMINATION**

16 Q. BY MS. WALKER: Mr. Acevedo, when questioning from
17 General Counsel, you were asked about safety meetings that
18 you had on jobsite projects at AMS. Do you recall that
19 testimony?

20 A. Can you repeat your question, please?

21 Q. Yes, certainly. When you were testifying yesterday in
22 response to questions from the General Counsel, you were
23 asked about some safety meetings that you had on the jobsite.

24 A. Yes.

25 Q. And I believe you testified that those meetings occurred

1 once a week; is that correct?

2 A. Yes.

3 Q. Approximately how many people would attend those safety
4 meetings?

5 A. All the workers who's there in the morning.

6 Q. How many workers were generally on a given crew?

7 A. It was right around 20.

8 Q. Did you receive any stickers from the Union?

9 A. I don't remember.

10 Q. Did you have any union stickers on your hard hat?

11 A. Yes.

12 Q. Okay. Let me refer you to -- it should be in the stack
13 to the right of you. I'm sorry.

14 JUDGE ROSAS: Which, General Counsel?

15 Q. BY MS. WALKER: It's CP-25(a) and (b). And looking at
16 what's been admitted as CP-25(a) and (b), were these the
17 stickers that were on your hard hat?

18 A. I was wearing one, the International one.

19 Q. Okay, you were wearing the one that's been identified as
20 25(b), underneath it --

21 A. Yes.

22 Q. -- is that correct?

23 A. Yes.

24 Q. Thank you. Did you wear that sticker the entire time
25 that you worked at AMS?

1 A. Yeah, that's in my hard hat.

2 Q. Did you ever complain to anyone in management about
3 safety conditions on the job?

4 A. Yes.

5 Q. And who did you complain to?

6 A. Mario Morales, and I spoke to Alex.

7 Q. What did you speak to Mr. Morales about?

8 A. About the scaffold, we got a big gap behind me. So I
9 was trying to put a kickboard to support us in the back
10 because it's a big gap.

11 Q. And what was Mr. Morales's response?

12 A. He never gave me the answer.

13 Q. And did you make the same complaint to Mr. Feliz?

14 A. Yes.

15 Q. And what was his response?

16 A. He don't say nothing either.

17 Q. When did you make the complaints to Mr. Morales?

18 A. I don't remember the date, but it was in -- after I come
19 down for lunchtime, I told him that we need kickboards for
20 us.

21 Q. Do you recall which job you were working at the time you
22 made the --

23 A. It was in University of Tampa.

24 Q. Were you working inside or outside?

25 A. Outside. All the way up.

1 Q. And approximately how high was the scaffold at that
2 time?

3 A. Sixty, seventy feet.

4 Q. And how long after making a complaint to Mr. Morales did
5 you complain to Mr. Feliz about this condition?

6 A. It was the same day or day after.

7 Q. Did you take any action to address the issue --

8 A. Yes.

9 Q. -- once you received no response from management?

10 A. Yes.

11 Q. What did you do?

12 A. I told the laborer to grab me a 16-foot plank and --

13 MR. HEARING: You told who?

14 THE WITNESS: The laborer, one of the laborers. One of
15 the main laborers from there, to grab me a 16-foot plank and
16 then I put it behind me. What I was working.

17 Q. BY MS. WALKER: After your discharge from AMS, did you
18 assist in the union effort to organize employees at AMS?

19 A. After I -- can you start again, please?

20 Q. Sure. After you were terminated from or discharged from
21 AMS, did you assist the Union in its organizing campaign of
22 the employees at AMS?

23 A. Yes.

24 Q. And what did you do in that regard?

25 A. I was helping them to make phone calls to the Spanish

1 speaker because some of those guys, they don't know nothing
2 about their benefits that they got.

3 Q. And approximately how many employees' numbers were you
4 given to contact?

5 A. I called maybe 10 guys. Between those 10 or 12, I mean,
6 I only speak with five, six.

7 Q. And did you leave messages for the other ones, or could
8 you not contact them?

9 A. I leave a message and then the one was -- the number was
10 not exists, wrong numbers.

11 Q. How many were wrong numbers?

12 A. So far I remember, three or two.

13 Q. When you were working at AMS, did you ever attend any
14 meetings with Mike Bontempo on the jobsite?

15 A. Yeah, when he was -- when he show up, so --

16 Q. And what did he generally do when he came to the
17 jobsite?

18 A. So personal, so I told about my hours, how many hours
19 that I need for qualify for my insurance, about my dues. So
20 a few questions, you know, about the Union.

21 Q. And approximately how many people would he talk to when
22 he would come to the jobsite?

23 A. In UT?

24 Q. Yes.

25 A. There was like seven guys.

1 Q. Were they all masons?

2 A. There was masons, like I want to say about -- a lot of
3 guys, the laborers, too. They're showing up to -- the day
4 that he went with the insurance and the --

5 Q. Yes.

6 A. -- everybody went there.

7 Q. And approximately how many people did he talk to on that
8 day?

9 A. The people that was there was around 20 guys, 17.

10 MS. WALKER: That's all I have, Mr. Acevedo. Thank you.

11 JUDGE ROSAS: Cross?

12 MR. HEARING: Jencks production, please.

13 MS. LEONARD: Your Honor, there were two affidavits
14 provided by Mr. Acevedo to the Board agents and a third
15 affidavit provided by the Union to the Board, which is for
16 the objections. One of the affidavits is eight pages,
17 another is three, and it looks like one page for the Union
18 affidavit.

19 **JUDGE ROSAS: Let's take about 10, 15 minutes. Go off**
20 **the record.**

21 **(Off the record from 9:44 a.m. to 10:09 a.m.)**

22 JUDGE ROSAS: Respondent, cross?

23 MR. HEARING: Thank you, Your Honor.

24 **CROSS-EXAMINATION**

25 Q. BY MR. HEARING: Mr. Acevedo, I'm Greg Hearing. I'm

1 going to ask you some follow-up questions on what you said,
2 all right?

3 A. That's fine.

4 Q. All right. You worked twice for AMS; is that correct?

5 A. Yeah, I worked twice for AMS.

6 Q. All right. And both times AMS knew that you were a
7 member of the Union, correct?

8 A. Yes.

9 Q. And you had dues deducted both times, correct?

10 A. The first time, yes, because the Union sent me to the
11 union BA, Mark Peterson. He sent me to apply for AMS because
12 Marc Carney, they spoke to Marc Carney and they told me to
13 apply, go to the office.

14 Q. And Marc Carney, he would've been the foreman's boss; is
15 that right?

16 A. I think he was superintendent.

17 Q. And did you know him to be a member of the Union?

18 A. I don't know if he was a member of the Union.

19 Q. Did you go to union -- any union meetings where he was
20 present?

21 A. No.

22 Q. Okay. And do you know if at one point in time he was
23 the sergeant-at-arms for the Union?

24 A. Pardon me?

25 Q. Did you know at what time he held an office in the

1 Union, Mr. Carney?

2 A. I never seen Mr. Carney.

3 Q. All right. So let's cover that prior employment, oh,
4 and some things that you filled out. You remember that
5 you -- you worked with Mr. Feliz to try to get employed the
6 second time around; isn't that --

7 A. Yeah.

8 Q. Do you remember having a belief that you weren't being
9 hired because AMS had a problem with your prior injuries?

10 A. I believe so.

11 Q. All right. Do you remember receiving some letters from
12 Mr. Feliz regarding -- well, first, let me have you identify
13 what it is that you sent to AMS. Would you turn, in that big
14 book there in front of you, in the binder, to Number 22,
15 Respondent's Exhibit 22 in evidence. One before it, maybe,
16 or after. It's the one that you typed up. There it is.
17 That was it. Yes, yes, yes.

18 A. Yeah.

19 Q. All right. So just to be clear, this is already in
20 evidence, but that's your signature?

21 A. Yes.

22 Q. You wrote this letter, do you remember that?

23 A. Yes, I sent this letter to them.

24 Q. And you sent it to AMS, and you said that you'd been a
25 certified union mason for over 9 years, right?

1 A. Yeah, for years.

2 Q. All right. And then do you remember receiving this
3 letter back from -- the next one, Respondent's 23 --

4 A. Yes.

5 Q. -- back from Mr. Feliz?

6 A. Yes.

7 Q. Take a moment to look at it. Do you remember receiving
8 that?

9 A. Yes.

10 Q. And is that to your Riverview address?

11 A. Yeah, it's my address.

12 Q. Yes, sir. All right. And so do you remember that
13 Mr. Feliz told you that, at the time, that there were no
14 positions for masons in Tampa, St. Pete, or Sarasota, but
15 that there were three projects scheduled to start that have
16 not? As soon as they begin, we will be glad to consider you
17 for employment. Do you remember that?

18 A. Yeah.

19 Q. All right. And then he mentions that there is a project
20 in Daytona Beach. Do you see that in the letter?

21 A. Yes.

22 Q. All right. Did you take him up on that offer to go to
23 Daytona Beach?

24 A. Yes, I called him about that.

25 Q. All right. And you weren't hired for that Daytona Beach

1 job; isn't that right?

2 A. No, he said -- he told me, if you are going there, it's
3 going to be on my own. So I'll have to pay for my suite, for
4 my apartment and my food.

5 Q. No travel pay or --

6 A. No, he said no.

7 Q. Okay. All right. So then you decided not to take that
8 opportunity, correct?

9 A. He said he's going to call me when he got something
10 close for me.

11 Q. All right. And then do you remember receiving
12 Respondent's Exhibit Number 24 from Mr. Feliz? Take a moment
13 to look at that. This is about a week later, after you
14 received the July letter about Daytona.

15 A. I never get this letter in my life.

16 Q. Do you remember receiving that?

17 A. No, I received this letter.

18 Q. Okay. And why is it that you can say that?

19 A. Because I only got that first letter. I live in the
20 same place, so this letter never comes to me.

21 Q. All right. So in this letter, he references the three
22 projects in the Tampa-St. Pete locations that he had
23 mentioned in the prior letter, saying that they would
24 start -- I'm in the first paragraph, sir, if you see that,
25 where he mentions that. And then he says in this letter, one

1 of the projects will be ready to start in the next week or
2 so, and we'll be in the need for masons. Aside from the
3 letter, did you hear that AMS was looking for masons for --

4 A. Yes.

5 Q. -- a Tampa area project?

6 A. Yes.

7 Q. All right.

8 A. On craigslist.

9 Q. I'm sorry?

10 A. On craigslist.

11 Q. Craigslist, okay.

12 A. Yes.

13 Q. And is that what ultimately led you to being hired to
14 work on the Westshore Yacht Club project?

15 A. Let me go back first.

16 Q. Sure.

17 A. So I was calling him for work. After he sent me the
18 letter, I was calling and in touch with him. So he said to
19 me that he don't got nothing right now. He don't got
20 nothing, like twice or three times. After that, I was
21 calling for work because I needed work, and he gave me a
22 number to work on yacht club. So I called the guy on yacht
23 club. I spoke to the foreman at yacht club, and he say he
24 don't got nothing for me, there was nothing for me.

25 Q. Do you remember who that was?

1 A. I don't know who was the foreman, but I heard that he
2 got fired.

3 Q. All right. So then what happened next?

4 A. Next, I mean, so I thought he was playing games with me
5 after that.

6 Q. You thought he was playing games with you?

7 A. Yeah, because, I mean, they give me a number to go to
8 work, call this guy for work, and I mean, he said he don't
9 got nothing for me, the foreman.

10 Q. Uh-huh.

11 A. And then I call him again, and that's when he sent me to
12 yacht club, to yacht club.

13 Q. All right.

14 A. Meet Coy, Coy Holly.

15 Q. Okay. Coy -- you say Holly. H-a-l-e, Hale?

16 A. I think it's the same one.

17 Q. Yeah, I think it is.

18 A. Yeah.

19 Q. I just want to make sure we're talking about the same
20 person.

21 A. Coy. Yeah, Coy. No, it's Coy.

22 Q. Okay. And you said, in your direct, that you thanked
23 Alex because he helped to get you hired, right?

24 A. Yeah.

25 Q. All right. So ultimately you didn't think he was

1 playing games with you because he did get you hired, right?

2 A. Yeah, but after a while. He hired me after a year I was
3 looking for work, you know. I was making calls, calls.
4 After calls and calls, he hired me because he needs masons on
5 that job.

6 Q. Do you remember telling Mr. Feliz that you thought that
7 you weren't getting hired because of your prior injuries on
8 the job?

9 A. I told him that.

10 Q. And he said that's not the case?

11 A. He said it's not the case.

12 Q. All right. Did you tell Mr. Feliz that Mr. Bontempo
13 told you that you weren't getting hired because of your prior
14 injuries or disability?

15 A. Yes.

16 Q. All right. And then are you aware that Mr. Feliz
17 followed up with Mr. Bontempo about that?

18 A. I don't know. I mean, they told me about that.

19 Q. All right. Well, if you look and see if you've ever
20 seen this series of e-mails. If you turn to Number 56 in
21 evidence, Respondent's 56 in evidence, it's on the last page.

22 MS. LEONARD: Your Honor, I object. The witness already
23 testified that he didn't know whether they followed up with
24 each other or not.

25 MR. HEARING: I'm asking about an e-mail.

1 MS. LEONARD: He's not --

2 JUDGE ROSAS: Which exhibit?

3 MR. HEARING: This is 56.

4 JUDGE ROSAS: Respondent 56?

5 MR. HEARING: Respondent's 56, yes, sir.

6 JUDGE ROSAS: Hold on.

7 MR. HEARING: The very back of the binder. It's already
8 in evidence.

9 MS. WALKER: Fifty-six?

10 MR. HEARING: Yes.

11 JUDGE ROSAS: Okay, so this document is in evidence,
12 correct?

13 MR. HEARING: It is. Yes, sir.

14 JUDGE ROSAS: Now, what is the question to this witness?

15 MR. HEARING: Was he aware of e-mail correspondence
16 between Mr. Bontempo and Mr. Feliz.

17 JUDGE ROSAS: Well, let's start off with this. Have you
18 ever seen that e-mail before?

19 THE WITNESS: No, sir.

20 JUDGE ROSAS: Do you have 56 there?

21 THE WITNESS: Yes, this is 56.

22 MR. HEARING: Yeah, he's looking at 56.

23 JUDGE ROSAS: Okay, now what's the next question?

24 Q. BY MR. HEARING: Did you have a conversation with

25 Mr. Bontempo about whether he told AMS that you weren't

1 getting hired because of the disability or your injuries?

2 A. No, he just told -- I mean, I wasn't told about that. I
3 mean, we're not talking about that.

4 Q. You didn't ask --

5 A. I don't think the topic.

6 Q. You didn't discuss with him --

7 A. No, not at all.

8 Q. Okay. But you did talk to him often, didn't you?

9 Mr. Bontempo?

10 A. Pardon me?

11 Q. You talked to Mr. Bontempo often, correct?

12 A. Yeah, once in a while when I called for work, you know.

13 Q. All right. And so you never brought up the topic of
14 what did you tell AMS about my disability or injuries?

15 A. To who?

16 Q. To Mr. Bontempo.

17 A. I mean, I told, I mean, they don't hire me because of my
18 injuries that I got, my shoulders.

19 Q. All right. And --

20 A. It was only one conversation that I remember so far.

21 Q. With Mr. Bontempo?

22 A. Yeah.

23 Q. All right. Now, ultimately you were hired to work on
24 the Westshore job, and it was in early February of 2016,
25 right?

1 A. Yes.

2 Q. All right. And when you did that, when you got hired,
3 do you remember executing the Company's employee handbook
4 acknowledgement?

5 A. What was that question?

6 Q. Sure. Let me have you look at an exhibit, and then
7 we'll go from there, all right? There it is, Number 25. Can
8 you turn to Number 25? Is that your signature, sir?

9 A. Yeah, that's my signature.

10 Q. And this appears to be a date of 10/1/15. Do you see
11 that?

12 A. Yeah.

13 Q. So what I wanted to follow up on is that if you were
14 hired for the first job back the second time at AMS for the
15 Westshore Yacht Club in early February, do you know why this
16 has a 10/1/15 date?

17 A. I don't know why it says that.

18 Q. Okay. That's your handwriting?

19 A. Yes.

20 Q. All right. So you must've filled it out that day.

21 JUDGE ROSAS: Repeat the question.

22 THE WITNESS: No. I mean, that's my sign -- that's my
23 letter, but the date, I mean --

24 Q. BY MR. HEARING: You can't explain that either?

25 A. No, I can't explain that.

1 Q. All right, turn to Number 2.

2 A. Because I was hiring in January.

3 Q. Right, I understand your testimony.

4 A. Yeah, I never went, I never went to the office in 2015,
5 so --

6 Q. Okay, turn to Number 2 in the book. Number 2.

7 A. Page 2?

8 Q. Respondent's 2.

9 A. This one?

10 Q. That looks like 1. Turn one more, Number 2. It's
11 always behind the tab number. There you go. So do you
12 recognize this to be AMS's employee handbook?

13 A. No.

14 Q. All right. Do you remember being provided a copy of the
15 employee handbook, in writing or electronically?

16 A. I never got this. They never gave nothing to me.

17 Q. Okay. Take a moment to look through it and see if that
18 refreshes your recollection.

19 A. I never see this when I went to apply. They only used
20 one form to go for my drug test.

21 Q. Okay. Now, turning back to Number 25, do you recall
22 filling out a form acknowledging the handbook earlier than
23 when you started, because there's an opportunity for you to
24 go to another AMS job other than the Westshore job?

25 A. Can you repeat your question?

1 Q. Sure. Do you remember filling this form out, that's
2 Respondent's Exhibit Number 25 --

3 MS. LEONARD: Objection, Your Honor, asked and answered.

4 JUDGE ROSAS: I'll allow it. Repeat the question.

5 Q. BY MR. HEARING: Do you remember filling this form out
6 at or around this time of October 15th, because there's
7 another opportunity for you to go to an AMS project before
8 the Westshore Yacht Club project?

9 A. My communication with Alex was by phone. So I went.
10 When I called him, he sent me to yacht club. It's the only
11 job that sent me to work. So no one else.

12 Q. All right. So let's see if you can answer my prior
13 question. Do you remember in or around October or the
14 beginning of October that there's an opportunity for you to
15 go to another AMS job --

16 A. No.

17 Q. -- that you chose not to take?

18 A. No, they never, they never, they never --

19 MS. WALKER: Objection, asked and answered. That was
20 the previous question.

21 JUDGE ROSAS: I'll allow it. You're still meandering
22 here. Go ahead.

23 THE WITNESS: They never told me to go to no other jobs.
24 Only they offer me yacht club.

25 JUDGE ROSAS: Is this document in evidence?

1 MR. HEARING: Yes, sir.

2 JUDGE ROSAS: Okay.

3 MR. HEARING: It's Respondent's 25.

4 JUDGE ROSAS: Sir, is this your handwriting?

5 THE WITNESS: Yes, sir.

6 JUDGE ROSAS: Including the date?

7 THE WITNESS: Yeah, this, I mean, it's look to me --

8 JUDGE ROSAS: That's your handwriting?

9 THE WITNESS: Yes.

10 JUDGE ROSAS: Okay. All right, next question.

11 Q. BY MR. HEARING: All right. So at the yacht club, when
12 you started, it was Coy Hale that was the foreman?

13 A. Yes, Coy.

14 Q. Coy, all right. And you don't remember who the foreman
15 was that worked there before him that you spoke to on the
16 phone after --

17 A. This is by phone, yes, sir.

18 Q. All right, but you don't remember his name?

19 A. No.

20 Q. All right. So when you were hired in February at the
21 Westshore Yacht Club, do you remember --

22 MS. LEONARD: Your Honor, I object. The witness has
23 testified several times that he was hired in January and not
24 February, and counsel keeps saying February.

25 JUDGE ROSAS: He went to the office in January?

1 MS. LEONARD: No, he testified that he started to work
2 on January 25th at the club.

3 JUDGE ROSAS: Do you accept that change, counsel?

4 MR. HEARING: My memory of the record is not as solid as
5 that.

6 JUDGE ROSAS: All right, let's ask it again. Let's ask
7 it again, when he started.

8 Q. BY MR. HEARING: Yeah, what's your recollection as to
9 when you started on the Westshore Yacht Club project?

10 A. What was what? What was --

11 Q. What was the date that you started on the Westshore --

12 A. 25, January 25.

13 Q. All right. Now, turning to General Counsel exhibits,
14 Exhibit 2.

15 JUDGE ROSAS: Let me get the book. I'll get that out of
16 your way.

17 MR. HEARING: Can I assist?

18 JUDGE ROSAS: Sure.

19 Q. BY MR. HEARING: It's right there, right there. You got
20 it? All right. Yesterday you were asked if you had been
21 provided this kind of orientation and safety, and within a
22 matter of seconds, you responded and said no. Do you
23 remember that testimony?

24 A. Yeah.

25 Q. All right. So I want you to actually take a moment to

1 look through it, sir, and look at the page, that at the
2 bottom do you see where it says page blank of 8? I want you
3 to turn to page 8 of 8. Are we on the same page?

4 A. Yeah, 8. Page 8?

5 Q. Yes, sir, page 8. At the bottom it says page 8 of 8.

6 A. Eight of eight, okay.

7 Q. You got it? You have to turn it sideways to see it.

8 The work at elevated platforms, working at heights, zero
9 tolerance for fall protection violations, is it your
10 testimony that you weren't provided information about that at
11 the time you started at AMS?

12 A. When I started, they never gave me no training for --
13 when I started, they never gave me training --

14 Q. All right.

15 A. -- for scaffold protection.

16 Q. So why is it that your signature, which you acknowledged
17 on Exhibit -- General Counsel Exhibit 2(c) on page 1, why is
18 it that your signature is on that document, sir?

19 A. Because sometimes they go in there, they go in there,
20 and they want us to sign up, that's it. We signed a lot of
21 papers most of the time.

22 Q. All right.

23 A. They don't give you no orientations.

24 Q. I want to be clear. This is on page 2(c). This is your
25 signature, correct?

1 A. Yeah, that's mine.

2 Q. At the top there?

3 A. Yes, yes. It's my signature, yeah.

4 Q. And you wrote the date 2/9/16?

5 A. Yes.

6 Q. All right. And then the Luis A. Acevedo handwriting, is
7 that your handwriting as well?

8 A. That's mine.

9 Q. All right. And who's David Acevedo that's below you?

10 A. It's another coworker.

11 Q. But not related to you?

12 A. No, sir.

13 Q. Okay. All right. And where were you when you signed
14 this?

15 A. It was early in the morning, so I went to Coy's truck.
16 He got some other kind of paper to sign up. So on Mondays we
17 send them a lot of papers --

18 Q. Uh-huh.

19 A. -- as a safety orientation, but we never got safety
20 orientation.

21 Q. I understand what your testimony is about it, but what
22 I'm trying to find out is where you were when you signed
23 this.

24 A. Where I was working? I was working in the yacht club.

25 Q. Oh, I understand that, but where at the yacht club did

1 you actually physically take this paper and put your
2 signature on it?

3 A. Outside of the building.

4 Q. Uh-huh. Any more specific spot than that?

5 A. I mean, we was all -- everybody was together.

6 Q. Okay.

7 A. So they give you the paper to sign up.

8 Q. Others got it?

9 A. So it wasn't on the floor. Outside of the building.

10 Q. Okay. Did others sign it at the same time as you?

11 A. Yeah, some guys signed up.

12 Q. Who did you witness sign it?

13 A. My witness?

14 Q. Who did you witness sign it? Who did you see sign it?

15 A. I don't remember who was -- I mean, I know all those
16 guys, they were my coworkers, but I don't see -- I keep
17 working to my job, to do my work.

18 Q. All right. So did you ask any questions about how to
19 use a harness while you were employed at AMS?

20 A. No.

21 Q. And you had your own harness; is that right?

22 A. Yes, because I got my own harness because they don't got
23 enough harnesses. So that's why I'm keeping my own harness.

24 Q. Right, but did you ever ask AMS for a harness?

25 A. Yes.

1 Q. Okay. And --

2 A. They told me it's in the toolbox.

3 Q. Okay. And you had had your harness for many years
4 because you've been a mason --

5 A. Yes.

6 Q. -- for many years prior to that, right?

7 A. Yes.

8 Q. And you knew how to use the harness, right?

9 A. Yes.

10 Q. And in fact, you testified about your knowledge about
11 OSHA.

12 A. Yes.

13 Q. You said that you believe that OSHA provided that you
14 could not tie off your harness to scaffolding. Do you
15 remember that testimony?

16 A. Yes.

17 Q. Let me just -- mark that for me, and I'll come back to
18 that. So where did you receive your training on how to use a
19 harness?

20 A. In Connecticut.

21 Q. Okay. Did Connecticut follow the OSHA policy up there,
22 too?

23 A. Yes.

24 Q. All right. And had you known the OSHA policy to change
25 at all during the time that you're a mason from Connecticut

1 to Florida?

2 A. I don't know that.

3 Q. Okay. And what did you learn in terms of how high you
4 needed to be in order to be harnessed and tied off?

5 A. After 6 feet you're supposed to tie up.

6 Q. Okay. Now, if you were facing a wall and you got rails
7 around you, then you don't have to wear a harness; is that
8 correct?

9 A. You're supposed to wear a harness.

10 Q. Okay, even if you have rails around you and you're
11 facing the wall?

12 A. Correct.

13 Q. All right. Do you remember being told by Turbo at UT
14 that when you said to him, well, I wasn't wearing a harness
15 outside, he said that's because you're facing a wall?

16 A. He said because you're facing a wall.

17 Q. Right. And do you remember that that morning on May
18 16th, because the work was inside and you were working on a
19 round column, that he expected you all to wear a harness and
20 tie off, correct?

21 A. Yeah.

22 Q. All right. And then when he found you later that
23 morning, you were wearing a harness and you were tied off,
24 but in his estimation, you were tied off wrong, right?

25 A. Yes -- I was tied off --

1 Q. Right, I'm not saying, I'm not saying you say you were
2 tied off wrong, but he told you that you were tied off wrong,
3 in his view.

4 A. Yes.

5 Q. All right. And then prior to that, though, you were
6 up --

7 A. He's screaming, first of all, he's screaming at me, what
8 are you doing? So --

9 Q. Okay. And you said that --

10 A. Let's be clear, you know.

11 Q. Sure. And it was you and Mr. Stevenson that he was
12 talking to, correct?

13 A. Yeah. Most of the time he was screaming at me.

14 Q. But he also screamed at Mr. Stevenson?

15 A. No, not really.

16 Q. Well, you know Mr. Stevenson got fired, too.

17 A. Yeah, I know that.

18 Q. On the same day.

19 A. I find that out the day after.

20 Q. Okay. And he was fired for the same thing, correct?

21 A. Correct.

22 Q. All right. And you had been working next to each other,
23 correct?

24 A. Yes.

25 Q. All right. And --

1 A. Excuse me. So if I got fired, why don't other people
2 get fired, too?

3 MR. HEARING: Objection, nonresponsive. Move to strike.

4 JUDGE ROSAS: The testimony is stricken.

5 Q. BY MR. HEARING: All right. Can you just listen to my
6 question and answer it?

7 A. All right.

8 Q. We can get through it faster. Your counsel will be able
9 to ask follow-up questions.

10 A. Uh-huh.

11 Q. Thank you. Actually, before Turbo showed up -- and I
12 want to see if I got the timeline right. He was there at the
13 start of the day at 7:00 a.m. for the safety discussion.
14 That's where he told you I want you to wear a harness and tie
15 off, correct?

16 A. Um-hum.

17 Q. That's a yes?

18 A. He don't say it to me. Mario comes to me.

19 Q. Okay. So I want to make sure we're clear, then. Is it
20 your prior testimony that Turbo, in that morning, said I need
21 you, because of the work that you're doing inside, I need you
22 to wear a harness and tie off? That's not correct?

23 MS. LEONARD: Your Honor, I object because I don't
24 believe there was that prior testimony.

25 JUDGE ROSAS: Let him ask it again. Go ahead.

1 THE WITNESS: Could you repeat your question, please?

2 Q. BY MR. HEARING: Sure. You previously testified that
3 Turbo told you that morning, at the start of the day, that
4 you should wear a harness and tie off. Do you remember that
5 testimony?

6 A. I don't remember, but I remember that Mario told me
7 that.

8 Q. Okay. So let's discuss what Mario said, then.

9 A. Okay.

10 Q. Mario said you need to wear a harness and tie off.

11 A. He told me, hey, Luis, do you got a harness because they
12 don't got enough harnesses. Do you got your harness? I said
13 yes, I got it in my car, I got my harness in my car. Do you
14 want me to go get it? He said yes.

15 Q. Yeah. So you're saying that Mario didn't tell you to
16 tie off then?

17 A. No, he don't tell me -- he didn't explain to me how to
18 tie it off, nothing.

19 Q. So then who told you to tie off that morning?

20 A. Nobody. I just tied off myself, but I do the same thing
21 that everybody was doing.

22 Q. All right. So let's be clear that Turbo never told you
23 that morning that you need to wear a harness and tie off.
24 That's your testimony now?

25 A. Yeah. I mean, I don't remember if he told me straight

1 to me.

2 Q. Okay.

3 A. Because we got a meeting in the morning. He explained
4 to everybody, I mean, what --

5 Q. Maybe that's where we're missing each other. Did he say
6 to the group that because of the work inside, I need to wear
7 a harness and tie off?

8 A. I don't remember if he said that or not.

9 Q. I'm sorry?

10 A. You confused me now.

11 Q. Okay. Is it my questions that you don't understand?

12 A. Yeah, yeah, I don't understand your question.

13 Q. All right. So if I ask you a question you don't
14 understand, just have me --

15 A. No, because yesterday I testified that Mario, he told me
16 to wear my harness. So you're trying to confuse me to Turbo.
17 Turbo told me to wear my harness. So I already told you that
18 the guy, the other foreman, he told me to wear my harness.

19 JUDGE ROSAS: All right, let me just explain something,
20 Mr. Acevedo. So, you know, the questions that are being
21 asked by the Company may not be the questions that you would
22 like to be asked, but he has to ask the questions the way he
23 wants to ask them.

24 THE WITNESS: Okay.

25 JUDGE ROSAS: You may not like the way it's being asked,

1 but you have a couple of ways to answer it.

2 THE WITNESS: I see.

3 JUDGE ROSAS: You can answer yes/no if he seeks a yes or
4 no answer. Or if he seeks an explanation or a narrative,
5 then you can give him, you know, the key narrative. But it's
6 not your role here to argue with him or explain why his
7 question doesn't make any sense. The lawyers on the other
8 side will follow up and maybe ask the question the way you
9 might want to have it asked, all right? So they have their
10 different jobs of asking the questions. So don't add
11 anything to the question. Either yes, no, I don't know or I
12 can't answer that, and then he'll take it from there.

13 THE WITNESS: Okay, sir.

14 JUDGE ROSAS: Okay? All right. Go ahead.

15 MR. HEARING: Thank you, Your Honor.

16 Q. BY MR. HEARING: So did Turbo tell you and the others,
17 not you directly, but the group of you all, that if you make
18 mistakes, you're going to be fired?

19 A. Yes.

20 Q. All right. And then once Mario talked to you about your
21 harness, then you went and got your harness and put it on; is
22 that right?

23 A. I went to my car, and then I put my harness on.

24 Q. All right. And then that's when you tied off the way
25 that you described that you tied off?

1 A. Yes.

2 Q. All right. So yesterday you testified that your belief
3 was that, under OSHA, you could not tie off to scaffolding.
4 Do you remember that testimony?

5 A. Yes.

6 Q. All right, let me show you what's marked for
7 identification purposes as Respondent's -- the cover will
8 be -- all right. And I'm going to provide this to you in
9 both English and Spanish, okay? Respondent's Exhibit 58 for
10 identification purposes.

11 MR. HEARING: Counsel, here you go. I think there's a
12 57, but I've only admitted --

13 JUDGE ROSAS: We have a 58, right?

14 MR. HEARING: Oh, we do?

15 MS. WALKER: I have a 58.

16 MS. LEONARD: Yeah, there's --

17 MR. HEARING: Okay.

18 JUDGE ROSAS: Do you want to make it 59?

19 MR. HEARING: Yes, sir. Can everybody mark 59 on there?

20 **(Respondent's Exhibit 59 marked for identification.)**

21 JUDGE ROSAS: Sure.

22 MR. HEARING: That's what happens when you get that many
23 exhibits; you can't keep track of them.

24 MR. THOMAS: Is 58 in evidence?

25 MR. HEARING: I don't think. Is 58 in evidence, Your

1 Honor?

2 JUDGE ROSAS: Let's see.

3 MR. THOMAS: Yeah, it is. I'm sorry, I missed that one.
4 It is.

5 Q. BY MR. HEARING: All right. So Respondent's 59 is being
6 handed to the witness. And again, it's been provided to you
7 in English and in Spanish, and I want to see if this
8 refreshes your recollection about OSHA's position on that
9 scaffolding can function as a suitable anchorage for fall
10 arrest systems. If you look at the second paragraph of this
11 opinion letter of April 2nd, 1998 --

12 JUDGE ROSAS: **Hold on, let's go off the record for a**
13 **minute.**

14 **(Off the record from 10:37 a.m. to 10:38 a.m.)**

15 JUDGE ROSAS: So counsel, so 59 is two pages of an OSHA
16 communication regarding certain sections of the OSHA law, and
17 then there's an accompanying translation, it would appear, in
18 Spanish. Can you tell us what the source of these printouts
19 are?

20 MR. THOMAS: Yes, Your Honor. This printout was
21 accessed yesterday evening, and that would be February the
22 7th, from the www.osha.gov website, as is visible on the
23 bottom print there, and it was printed out, and the website
24 allows the user to see the text in English or Spanish by way
25 of a mouse click on the appropriate language.

1 MR. HEARING: May I proceed, Your Honor?

2 JUDGE ROSAS: Okay, let me just -- before you delve into
3 this, let me just see how we want to address it, because if
4 you're going to read -- refer to the content more than just
5 refreshing recollection, let's see if there's any way to get
6 it into evidence. Or you're not seeking to put it into
7 evidence?

8 MR. HEARING: I'm not seeking to put it into evidence.

9 JUDGE ROSAS: Okay, that's fine.

10 MR. HEARING: We can argue it --

11 JUDGE ROSAS: That's fine.

12 MR. HEARING: -- as necessary later. But I'm simply
13 trying to see if I can refresh his recollection based upon a
14 statement that --

15 JUDGE ROSAS: Okay. Well, I've taken counsel's
16 representation that this is a communication, as the Internet
17 website seems to indicate, from an OSHA official to a
18 contractor, and based on that good faith representation, you
19 can seek to elicit -- refresh recollection.

20 Q. BY MR. HEARING: Mr. Acevedo, have you read through this
21 document?

22 A. Yes.

23 Q. In both English and Spanish?

24 A. Yes.

25 Q. All right. And does that refresh your recollection as

1 to what your understanding of what OSHA's requirements were
2 with regard to whether you could tie off to scaffolding?

3 A. Yeah, but you can tie off to the scaffold if you've got
4 weight on the scaffold. That scaffold where I was, where I
5 was working, they only got like 50 pounds on the scaffold, 50
6 bricks on each side. Plus, the scaffold wasn't wearing
7 safety pins. So if I fall down, I would've taken the
8 scaffold with me, all the scaffold and the bricks and the
9 planks with me.

10 Q. All right. So is this scaffolding that you're talking
11 about not having a safety pin, was that interior or exterior?

12 A. Interior.

13 Q. Interior. Got you. All right. And hence the need for
14 you to tie off properly to the scaffolding; is that correct?

15 A. I'm sorry?

16 Q. If you were inside and you said you didn't have the
17 weight that you needed, you needed to tie off properly to the
18 scaffolding to be safe, correct?

19 A. Yeah. I think I tied off properly. The way that I was,
20 I was good.

21 Q. I know, you said that, and I'm not asking you --

22 A. Okay.

23 Q. -- to change your testimony on that. I'm asking,
24 though, if you agree that you needed to be tied off correctly
25 to be safe.

1 A. Yeah, but I mean --

2 Q. Yes or no?

3 A. Yeah, I'm supposed to tie off correct.

4 Q. All right. But you and Mr. McNett -- you and Turbo had
5 a disagreement as to how you tied off, correct?

6 A. Yes.

7 Q. And then ultimately that disagreement led to your
8 termination, correct? To your discharge?

9 A. Yeah, he said it's going to be for the day, but it
10 wasn't in the morning. He wait until lunchtime to tell me to
11 be out for the day.

12 Q. Okay. Yeah, he had you retie a different way, didn't
13 he?

14 A. Yeah, he retie me a different way.

15 Q. Okay. And then at lunchtime -- and by the way, that was
16 at about 8:30 in the morning --

17 A. Yes.

18 Q. -- that he had you retie; is that correct?

19 A. Yes.

20 Q. And then he came back at lunch, and he said you're going
21 home for the day?

22 A. He said I'm going for the day.

23 Q. Right.

24 A. He and Fernando.

25 Q. And then nobody called you that night and told you what

1 was the matter, right?

2 A. No, no.

3 Q. The next morning you came to the jobsite, correct?

4 A. Yes.

5 Q. You testified that you and Mr. McNett, Turbo, had a
6 conversation that morning, correct?

7 A. Yes.

8 Q. And he said that you've been terminated?

9 A. Yeah, he said I will let you go.

10 Q. Okay. And you said that you felt it was because you're
11 in the Union?

12 A. When he told me I'm fired, said you're firing me because
13 I'm in the Union.

14 Q. Right. And then you said words to the effect of -- I
15 think you said yesterday that this is America --

16 A. Yeah, said this is America. Fight for your rights.

17 Q. All right. And then you had some conversation with him,
18 or was it somebody else, about being a layoff?

19 A. I mean --

20 Q. You had asked to be laid off?

21 A. You're asking me, are you fired? I mean, so when they
22 say you fired -- that means I'm unable to be on unemployment.
23 He said, no, you fired. When he said you fired, his smile on
24 his face, that he's enjoying doing it when he fired me.

25 Q. Okay. Were you raising your voice to him?

1 A. No, not that day. It was the day before when I raised
2 my voice a little bit when he told me about the safety -- did
3 I get training for tying up to the scaffold -- I mean, tied
4 down with -- I mean wearing harness, is the only one I raised
5 my voice a little bit. I never disrespect Mr. McNett.

6 Q. The day before he told you that, in his estimation, you
7 had lied to him about not being trained, right?

8 A. Yeah, because I was -- they give me training to tie down
9 to the floor. They never give me training to tie it off to
10 the scaffold. It's two different things.

11 Q. All right. And so when you had this conversation with
12 him the next day about being laid off instead of fired, he
13 said no, you're fired, right?

14 A. Yes.

15 Q. And then you filed for unemployment, correct?

16 A. Yes. First, I call unemployment, so --

17 Q. Right. All right. And you understood that the Company
18 fought or tried to resist you getting unemployment; isn't
19 that correct?

20 A. Yes. Yeah.

21 Q. All right. Now, then, the conversation with Mr. Morales
22 -- any other conversations with him on the 16th or the 17th?

23 A. Mr. Morales? No.

24 Q. All right. On the 17th in the morning, didn't you say
25 to Mr. McNett that, well, I drove all the way in, and now

1 you're firing me, and I should be paid for that? Do you
2 remember having that conversation?

3 A. I said to him, I mean, why did you guys let me come over
4 here all the way from my house or you guys don't call me?

5 Q. Right. And then he said he'd pay you for that time,
6 right?

7 A. Who say that?

8 Q. Mr. McNett.

9 A. No, he don't say that.

10 Q. You got paid for that time, didn't you?

11 A. No, sir.

12 Q. Okay.

13 A. I mean, you said for the time for the -- I mean, that
14 day or for the show-up?

15 Q. For the show-up.

16 A. In my check I'm supposed to get 8 hours. I did like 10
17 hours, so -- I mean, maybe you get paid for that. But I
18 don't know if you get paid -- he told me -- he never told me
19 I was not paid for the showing up time.

20 Q. Okay. So you don't know whether you got paid for
21 showing up?

22 A. I don't know exactly.

23 Q. All right. And then were you still there when
24 Mr. Stevenson showed up?

25 A. No.

1 Q. Okay. So you called him, though, and said don't come
2 because we're fired?

3 A. No, I don't say you don't come. So that day it was
4 raining, and I explained to him that I got fired. So he told
5 me that he's trying to call him, but he don't answer the
6 phone.

7 Q. Okay.

8 A. That's the only communication that we had with him.

9 Q. But you spoke to Mr. Stevenson?

10 A. Yes.

11 Q. And did you tell him don't come?

12 A. No, I never said to him don't come.

13 Q. What did you say to him?

14 A. He told me that he's calling Turbo if they're going to
15 work or no.

16 Q. But you told Mr. Stevenson you were fired?

17 A. I told him, yeah.

18 Q. And did you tell him he was fired, too?

19 A. I never said that.

20 Q. All right. Did you ask Turbo whether Mr. Stevenson was
21 being fired, too?

22 A. No.

23 Q. Did you have a discussion with him about Mr. Stevenson?

24 A. No.

25 Q. All right. Now, the stickers that you had on your hat

1 or the sticker that you were asked about on your hat -- you
2 had multiple stickers on your hat, didn't you?

3 A. Yeah, for the -- by the contracts and my union
4 International sticker.

5 Q. All right. So how many do you remember having on your
6 hard hat, how many stickers?

7 A. Maybe three for different jobs, plus my sticker from the
8 Union.

9 Q. All right. So when Mr. Bontempo came to the University
10 of Tampa project and he gave out Gatorade T-shirts late in
11 the day when you said it was hot, do you remember that?

12 A. Yeah, I remember that.

13 Q. And if it was hot and you were -- it would've been --
14 and I think you indicated it was at 5:30 at night when he
15 came.

16 A. He comes around 3:30, that time that we're supposed to
17 go home. And then I told him that we're leaving at 5:30
18 because we want to start working -- we work overtime. But we
19 work straight, from 3:30 to 5:30 we didn't stop. You're
20 supposed to take a break, but we did not ask to take a break,
21 a 10-minute break.

22 Q. All right.

23 A. By law.

24 Q. So what time did he come? I want to be clear.

25 A. He comes around 3:30, 3:25.

1 Q. All right. Let me show you your affidavit that you
2 provided to Board Agent Aybar on June 7th, 2016. If you read
3 at page 3, lines 4 through 10, if you can read that to
4 yourself first. From here to here, and then let me know when
5 you've read that.

6 A. You want me to read it for you?

7 Q. No, sir.

8 A. All right.

9 Q. Just read it to yourself, and then I'll ask you some
10 questions. I just want you to refresh your recollection of
11 what you said under oath there.

12 A. (Reviews document.)

13 Q. Have you read through 4 through 20?

14 A. Yeah.

15 Q. Line 4 through 20.

16 A. Oh, 4 to 20?

17 Q. Yes, sir, have you read that far?

18 A. No.

19 Q. Not yet?

20 A. No.

21 Q. Okay.

22 A. (Reviews document.)

23 Q. Did you get to line 20 yet, sir?

24 A. Yes, sir.

25 Q. All right. May I have it back, please? Do you remember

1 writing a sworn statement to the Board that Mr. Bontempo, in
2 about late April -- these are you words, in or about late
3 April or early May 2016, Bontempo first visited the
4 University of Tampa project at about 5:40 p.m. Do you
5 remember giving that?

6 A. Yeah. So I said that, but I mean --

7 Q. Are you confusing your days? Did he come more than
8 once?

9 A. No, he come up more than one time, more than one time.

10 Q. Okay.

11 A. The time he comes, 3:30, and then I told him he could
12 come -- I mean, to come at 5:30 because we're leaving at
13 5:30.

14 Q. All right. But you put here that he first visited the
15 University of Tampa project at about 5:40 p.m. in or about
16 late April or early May 2016; is that correct?

17 A. Yeah, but that's when he arrived, but I mean, he never
18 went the first time, he went for two, three times to that
19 job.

20 Q. Okay. But you didn't put that in this affidavit?

21 A. I don't put that. They write it when I talk, you know.

22 Q. Well, I understand that. But they had you review it;
23 isn't that right?

24 A. Yeah, they had me review it.

25 Q. And you put your initials on the bottom of each page,

1 acknowledging that you --

2 A. Yeah, but I mean, the reviewing would be after 3, 4
3 hours, you know, so I signed that. I mean, I signed that
4 paper. I was to take a look at it, and then I signed that
5 paper.

6 Q. You were given an opportunity to revise it, correct?

7 A. Yeah, that's correct.

8 Q. I'm sure the Board agent would do that, and he did it
9 for you, didn't he?

10 A. Yeah, he did it for me.

11 Q. All right. But you chose not to revise that paragraph,
12 correct?

13 A. I reviewed the -- but I don't want to go so deep, you
14 know, so I just give it the principal.

15 Q. Okay. So when he was there that day, at the end of the
16 day at 5:40 p.m., where did he meet with you?

17 A. In the parking lot.

18 Q. Okay. And there were about 11 laborers and 8 or 9
19 masons --

20 A. Yes.

21 Q. -- including you there, right?

22 A. Yes, everybody would leave together.

23 Q. All right. And of the masons who were present, only
24 three or four were union members, correct?

25 A. Yeah.

1 Q. You remember reading that in your affidavit --

2 A. Yeah, yeah, yeah.

3 Q. -- right?

4 A. Yeah.

5 Q. Okay. And you remember that he handed out papers to the
6 masons for health insurance and possibly to sign up as union
7 members?

8 A. Yeah, he gave them some papers. If they're interested
9 in the Union, you know, you can sign up.

10 Q. All right. And he handed those papers to about eight to
11 nine masons, correct?

12 A. He gave to -- no, to four guys that received. The other
13 guys, they're leaving.

14 Q. All right, let me show you your affidavit again, if I
15 may approach.

16 **JUDGE ROSAS: Yeah. Let's take a 5-minute break.**

17 **(Off the record from 10:52 a.m. to 11:00 a.m.)**

18 MR. HEARING: May I approach again?

19 JUDGE ROSAS: Sure.

20 Q. BY MR. HEARING: All right. So, Mr. Acevedo, have you
21 read page 3 of your affidavit, lines 11 through 15?

22 A. Yeah.

23 Q. All right. You previously testified that you thought
24 that Mr. Bontempo only handed the papers to three or four
25 masons. Here, under oath, you said that Mr. Bontempo handed

1 the papers to about eight or nine masons, correct?

2 A. I mean, so now I remember. So everybody was writing the
3 papers to him, even the laborers, too, laborers. I mean,
4 they went there for the churros and Gatorade, and then they
5 give you the application or some forms.

6 Q. But it's correct, what you said here on June 7th of
7 2016, that he handed the papers to about eight to nine
8 masons?

9 A. Yes.

10 Q. Okay.

11 A. Between union and non-union.

12 Q. And you said that -- well, actually, and then a few
13 masons signed the papers that Mr. Bontempo handed to them,
14 right?

15 A. Yeah, but that's a paper; it wasn't the application,
16 just a piece of paper, you know, with a name, and that's it.

17 Q. Okay. But again, here in your affidavit you don't say
18 what the papers are. You just say signed the papers; is that
19 right?

20 A. Sign paper. That doesn't say application either, right?

21 Q. No, it doesn't.

22 A. Okay.

23 Q. It just says signed the papers.

24 A. They signed them.

25 Q. But now you're clarifying that you believe it was not a

1 union authorization card, or what do you think it was that
2 they signed?

3 A. I don't -- to that.

4 Q. Okay. And Mr. Bontempo, when he was there doing this,
5 he asked you which employees were masons and --

6 A. Yeah, he asked me who is a mason, I mean, who is a
7 mason. I told him who is a mason and who is not a mason.

8 Q. Okay. And then you told about four masons about the
9 benefits of joining the Union?

10 A. Yes.

11 Q. All right. Now, you testified earlier that in addition
12 to this time when he came at 5:40 p.m., which you've got in
13 your affidavit, that he came at 3:30 and spoke to you?

14 A. He spoke to me. Yeah, he come to me and spoke to me.

15 Q. All right.

16 A. Around that time.

17 Q. And when did he speak to you at 3:30?

18 A. He said, hey, I will come --

19 Q. Not what, but where did he speak to you?

20 A. Where?

21 Q. Yes, sir.

22 A. Outside the --

23 Q. And so where would that be?

24 A. It's next to the scaffold.

25 Q. Okay. So on the jobsite?

1 A. On the jobsite.

2 Q. All right. And how long did you speak to him?

3 A. It was something quick, I mean, maybe a minute, 2
4 minutes.

5 Q. Did he have Gatorade, T-shirts with him at that time?

6 A. No.

7 Q. All right. And what did you tell him at that time?

8 A. I told him that we're leaving at 5:30.

9 Q. Um-hum.

10 A. So I mean, it's hot. I mean, if you can bring -- I told
11 him personally to bring Gatorade or something to drink.

12 Q. All right. And at that time, at 3:30 or so you were
13 working, correct?

14 A. Yes.

15 Q. All right. So how long did this meeting at 5:40 -- I
16 don't mean to say meeting, but this gathering at 5:40, how
17 long did that last?

18 A. It's taking like, I mean, 10 minutes.

19 Q. Okay.

20 A. Because everybody wants to go home, you know? So at
21 that time --

22 Q. Yeah. All right. The next day you testified that
23 Mr. Mario Morales asked you what paper that you signed; is
24 that right?

25 A. Yes.

- 1 Q. And you didn't say anything back, right?
- 2 A. Yes.
- 3 Q. All right. Now, Mr. Morales is a long-time member of
- 4 the Union, correct?
- 5 A. Yes. He told me, yes.
- 6 Q. Do you remember how many years?
- 7 A. He told me 14 years working for the Company, 14, 15.
- 8 Q. All right. And been in the Union that long, too?
- 9 A. Who, him?
- 10 Q. Yes.
- 11 A. Yeah.
- 12 Q. All right. Did Mr. Morales ask you about union
- 13 insurance benefits --
- 14 A. Yes, yes.
- 15 Q. And you had pretty good knowledge about it, I suppose?
- 16 A. Yes.
- 17 Q. Because it wasn't just him, but Mr. McNett asked you
- 18 about it too, right?
- 19 A. Yeah. I don't know why they ask me, they come to me,
- 20 because they got more years in the Union. They come to me
- 21 and asking me a few things.
- 22 Q. And you said that Turbo had said that the Union steals
- 23 our money we deserve. Remember you --
- 24 A. Yes.
- 25 Q. -- testified about that yesterday? Was that a

1 conversation with you that he said that, when you were
2 talking about insurance benefits?

3 A. No.

4 Q. All right. What was the setting of that, when he said
5 that?

6 A. The meetings.

7 Q. All right. So did he explain or did you ask what he
8 meant by stealing the money that you deserve?

9 A. No.

10 Q. Okay.

11 A. Because he -- he told all the time on Mondays or twice a
12 week, he'd say the same thing about the Union.

13 Q. He was a dues-paying member of the Union, though, wasn't
14 he?

15 A. Who, him?

16 Q. Turbo.

17 A. I don't know if he paid his dues or not.

18 Q. Okay. Did you ask him why are you asking me about union
19 insurance, and you said earlier he had a number of hours, a
20 lot more --

21 A. I mean, I was trying to be friendly with him.

22 Q. Okay. But you understood when he spoke to you about
23 insurance, and you said that he had more hours than you, and
24 you didn't know why he was talking to you about it. He had
25 those hours as a union mason, right?

1 A. I don't know if you talk about hours in the Union.

2 Q. Okay. Do you happen to know the day or date when

3 Mr. Feliz spoke to the Hispanic masons?

4 A. If I remember, you say?

5 Q. Yes, do you remember the date?

6 A. No, I don't remember the date, but it was early May,
7 May, the end of April. That was 2 weeks before I get fired.

8 Q. Okay.

9 A. Let me go.

10 Q. When Mr. Feliz spoke to you, did you recall there being
11 a question of him by one of the masons about wages?

12 A. He didn't spoke to me, he spoke to everybody.

13 Q. Yeah, when I say you --

14 Do you remember someone in the group having a question
15 about wages?

16 A. No.

17 Q. Do you remember somebody in the group having a question
18 about insurance?

19 A. No one.

20 Q. All right. Mr. Luna was present for that, correct?

21 A. Yes.

22 Q. All right. When you were laying the bricks that morning
23 on May 16th, 2016, you were touching the ceiling with your
24 head; is that correct?

25 A. I was touching my -- yes, I was touching that day and

1 the day before. While working on the scaffold, I was
2 touching my head. So I told the laborers to do something
3 with the scaffold because they raised the scaffold too high
4 for us.

5 Q. And you were working about 7½ feet high, correct?

6 A. Yes.

7 Q. All right.

8 A. That's the most that we can. Seven. I mean, parts of
9 the scaffold are 7, 6-something, 6'8".

10 Q. Well, let me show you your affidavit, page 6 of 8, lines
11 4 and 5. Do you see where you said, "I was touching the
12 ceiling with my head while laying bricks. I was about 7½
13 feet high"?

14 A. Yeah.

15 Q. Do you see that?

16 A. Yeah.

17 Q. And that was accurate, what you said?

18 A. Yeah.

19 Q. All right. And you said yesterday you're 6 feet tall?

20 A. Six foot tall.

21 Q. So you were working at -- then the height of the ceiling
22 would've been somewhere below 13½ feet; is that correct?

23 A. Yeah, because, remember, the scaffold, they've got the
24 wheels too, the scaffold got wheels.

25 Q. Okay.

1 A. So it was getting higher.

2 Q. All right. So the height at that point when you were
3 working inside, when all of this incident occurred, would've
4 been about 14 feet to the ceiling?

5 A. So it can be 14, it can be 15, because I mean --

6 Q. Okay.

7 A. I mean, I can't give you the exact measure --

8 Q. Close enough.

9 A. -- because it's two scaffolds high, plus the wheels they
10 got, plus the planks. So you have to add those on the
11 scaffold.

12 Q. All right. So you testified yesterday about Tim Bryant.
13 Do you remember that?

14 A. Yes, sir.

15 Q. And you said that -- and you witnessed him working at an
16 elevation above 6 feet not wearing a harness or tied off,
17 right?

18 A. Yes.

19 Q. You remember being a witness to his --

20 A. Yes.

21 Q. -- disciplinary action?

22 A. Yes.

23 Q. All right. And he was discharged but then came back --

24 A. Yes.

25 Q. -- was your testimony?

1 A. Yes.

2 Q. How soon after did he come back?

3 A. He was one of the main guys for the Company. He was --
4 he was the main guy for the Company.

5 Q. He was a mason, wasn't he?

6 A. A mason and main guy, like he was helping the foreman.

7 Q. Okay, the main guy --

8 A. The main guy there. I mean, he helps the foreman.

9 Q. All right. So was he like a crew leader?

10 A. He was trying to be a crew leader.

11 Q. Okay, got you. All right. And so who was the foreman
12 on that job?

13 A. Coy.

14 Q. Anybody else?

15 A. No.

16 Q. Okay. And did Coy go out from that project for a period
17 of time?

18 A. Not that I remember.

19 Q. Not that you remember. Did another foreman come in at
20 some point in time while you were still there?

21 A. No.

22 Q. Do you know whether when Mr. Bryant came back, whether
23 he was hired by someone that was on the job there that wasn't
24 aware that he had been discharged for a violation of the fall
25 protection program?

1 MS. LEONARD: Objection, Your Honor. It calls for
2 speculation.

3 JUDGE ROSAS: If you know.

4 THE WITNESS: No. Can you repeat your question, please?

5 Q. BY MR. HEARING: Sure. Are you aware of whether
6 Mr. Bryant was hired by someone back on that job?

7 A. No.

8 Q. You said he came back on that job.

9 A. He came back on the job.

10 Q. Right. Do you know who hired him back?

11 A. Nobody hired him. I mean, they sent him home for the
12 day.

13 Q. Well, okay. You said that it was a couple days later
14 that he came back.

15 A. Yeah, I don't see that the next day, but I see the day
16 before.

17 Q. All right. And are you sure that the timeline was that
18 short, as opposed to some period of time later?

19 A. I don't remember. I mean, I remember, I mean --

20 Q. Are you aware --

21 A. -- he started working.

22 Q. After he did come back, did he later get fired again?

23 A. No, I don't see that he got fired again.

24 Q. All right. When did you leave that job?

25 A. I leave -- yacht club?

1 Q. Um-hum.

2 A. In April, middle of April.

3 Q. Middle of April, okay. And at the time you left, you
4 believe he was still working on that job?

5 A. Yes.

6 Q. All right. Let me see if I have anything else. You
7 testified about making phone calls to the Spanish-speaking
8 masons at AMS. Do you remember that testimony today?

9 A. Yes.

10 Q. Who asked you to make those phone calls?

11 A. I mean, I told the guys that I will help you, you know,
12 the call for elections.

13 Q. Who are the guys you told that to?

14 A. Mike.

15 Q. Mr. Bontempo?

16 A. Yes.

17 Q. And anybody else?

18 A. Yeah, there was another guy who was Spanish, too. I
19 don't remember his name.

20 Q. Yeah. And did you make these phone calls from the Union
21 hall or where?

22 A. No, from my house.

23 Q. From your house, okay. The numbers were provided to you
24 by the Union?

25 A. Yes.

1 Q. All right. And so you didn't go back to Connecticut to
2 work --

3 A. No.

4 Q. -- for a period of time? Okay. And while you were
5 employed at AMS, you spoke -- you testified that at one point
6 when Mr. Bontempo was there, you referred the masons to vote
7 for the Union. Did you also do it other days that you were
8 there?

9 A. When I was employed for AMS?

10 Q. Yes.

11 A. No, I just told about to sign up for the Union for the
12 benefits.

13 MR. HEARING: Okay. No further questions.

14 JUDGE ROSAS: Any redirect?

15 MS. LEONARD: There will be. Could we have 3 to 5
16 minutes to prepare?

17 JUDGE ROSAS: Sure. Off the record.

18 (Off the record from 11:16 a.m. to 11:18 a.m.)

19 JUDGE ROSAS: Okay, on the record.

20 REDIRECT EXAMINATION

21 Q. BY MS. LEONARD: Mr. Acevedo, I just have a few follow-
22 up questions for you. When you spoke to Mr. Feliz about the
23 job in Daytona, do you know what job that was?

24 A. No.

25 Q. Okay. Does the Bethune-Cookman University sound

1 familiar?

2 A. Yes, I know that it was a university.

3 Q. Okay. Do you know of any other AMS employees who were
4 working on that job?

5 A. No, when I was -- when I called him when he sent me the
6 letter.

7 Q. Um-hum.

8 A. But after, yes, I know who worked there.

9 Q. You learned of others later?

10 A. Pardon me?

11 Q. You learned that some employees did work there?

12 A. Yes, after I started working for AMS in yacht club, I
13 mean.

14 Q. Okay. And did those employees tell you anything about
15 their work at Bethune-Cookman?

16 A. They told me that they're laying bricks.

17 Q. Okay. Did they tell you anything about -- why did you
18 ask Mr. Feliz if you would get room and board and travel
19 expenses if you went to the Daytona job?

20 A. Because most of the time we do work for the way the
21 companies pay for the room and the food.

22 Q. Did you ever learn of any other employees AMS was
23 employing at the Daytona job for whom they were paying those
24 expenses?

25 A. Yes.

1 Q. From who did you learn about that?

2 A. From Armando Camacho, Salvador Camacho, and his other
3 brother, Ramon Camacho.

4 Q. Okay, thank you. And jumping back now to the University
5 of Tampa job, the columns that you were building inside, were
6 those round or square or rectangular or some other shape?

7 A. I mean, it's rectangular. I mean, it's --

8 Q. Okay. What were the dimensions?

9 A. Like 5, around 5 by 2.

10 Q. Okay.

11 JUDGE ROSAS: You said rectangular?

12 THE WITNESS: It's a column. I mean, it's like 15 high
13 by 5 foot wide by 2 feet. There's no other way around; it's
14 only one side. It's only the face.

15 Q. BY MS. LEONARD: Were they coming out the wall?

16 A. Yes.

17 Q. Okay. And so the 2 feet, was it 2 feet out from the
18 wall --

19 A. It was 2 feet.

20 Q. -- or 5 feet out from the wall?

21 A. Five feet looking to me. Then 2 feet on the sides.

22 Q. Okay. So 5 feet across, 2 feet back, and then the wall.

23 A. It's only one face.

24 Q. Okay. All right. And on the day that Mr. Bontempo came
25 to the University of Tampa with Gatorade, when you left to go

1 home that day, was Mr. Bontempo still there?

2 A. Yeah.

3 Q. Okay. Do you recall whether Mr. Bontempo was still
4 talking with any other employees when you left to go home?

5 A. Mr. Rodriguez.

6 Q. Do you recall whether Mr. Bontempo was talking to other
7 employees when you left to go home?

8 A. I don't remember.

9 Q. Okay. When you were talking about scaffolding, you said
10 there are planks laid down. Is that what you stand on, on
11 the scaffolding?

12 A. Yes.

13 Q. How thick are those planks?

14 A. It's like 2 inches.

15 Q. Okay. And regarding Mr. Tim Bryant, when you saw him
16 being sent home at the yacht club job, you testified that you
17 weren't quite sure what day he came back to work.

18 A. Yeah. I mean, the next day I don't see him. The day
19 after, around there, I saw him.

20 Q. Okay. And so was that the same week?

21 A. The same week.

22 MS. LEONARD: Okay. I have no further questions, Your
23 Honor.

24 JUDGE ROSAS: Charging Party?

25 MS. WALKER: No questions, Your Honor.